Listing of Legislative records in
Oregon State Archives pertaining to:

HOUSE BILL 2157, 1973
(Introduced at request of Attorne General)
re: public disclosure by public bodies of public matters...
(open records law)

SEE ALSO: SB15, SB206

JOINT PROFESSIONAL RESPONSBILITY COMMITTEE MINUTES:

Feb. 26: p. 1 thru 12 (Also on Tape 2, side 1, 000-389 and side 2, 000-end)
(discussed with SB 15; also reference made to SB 206)
Mar. 5: p. 6 (Also on Tape 2, side 1, 389-end)
(mentioned briefly during discussion on SB 15; this hearing not cited in index)
Apr. 16: p. 1, 2, 3, 4 & 5 (Also on Tape 6, side 1, 000-1400)
(HOUSE) May 14: p. 1, 2 & 3 (Also on Tape 9, side 1, 000-550)
June 11: p. 3 & 4 (Also on Tape 13, side 1, 000-1604)
June 18: p. 1 & 2 (Also on Tape 13, side 2, 1254-1397)
June 20: p. 1 & 2 (Also on Tape 14, side 1, 000-203)
Note: this hearing not cited in index

Separate exhibit file contains:

1. Under "HB 2157": list of bills which may conflict with HB 2157, dated 2/19/73, unidentified source. 1 page.

2. Under "Open Meetings"- HB 2157 & SB 15": 208 pages, including some exhibits identified by bill number and date and/or number of exhibit as cited in minutes, but most are not.

27 M
209 E

Compiled by: M. Keillor, Reference Archivist
5/12/76

JOINT SPECIAL COMMITTEE ON PROFESSIONAL RESPONSIBILITY

February 26, 1973 7:00 p.m. Room 309 Capitol

Members Present: Senator Jack D. Ripper, Co-Chairman
Senator Wallace Carson
Senator Edward Fadeley
Senator Fred Heard
Senator Thomas Hartung

Representative Robert Ingalls, Co-Chairman
Representative Norma Paulus
Representative George Cole
Representative Edward Lindquist

Members Delayed: Representative Margaret Dereli

SIDE 1
~~SIDE 2~~ 000
TAPE 2
OSA 9/23/80.

Senator Jack Ripper, Chairman, called the meeting to order at 7:04 p.m. in Room 309 of the Capitol. Chairman Ripper asked that Representative Margaret Dereli be recorded as delayed and excused from the meeting but would attend later.

The first item on the agenda was a vote on the meeting time. It was kept at 7:00 p.m. (rather than a 7:30 time).

Chairman Ripper requested that the testimony be limited to 5-6 minutes and he advocated to the witnesses that they not repeat testimony that had already been given.

064 Senator Fred Heard, principle sponsor of SB 15, began the testimony for the evening. He expressed a hope to the committee that they adopt SB 15 as the skeleton for a strong and comprehensive open meetings bill for Oregon. SB 15, he stated, is written with broad concepts and he hoped that the committee would take a strong look at its contents.

Senator Heard pointed out that it was a combination of the California Brown Act and the State Agency Act. The Brown Act was not applicable to state agencies but rather, only local agencies. Since 1967, California has had a law of general accessibility to state boards and commissions which are required by law to conduct official meetings. He added that agencies which are adjuncts of the court system and specific agencies that were specified were exempted by law and he expressed a hope that this would be followed in Oregon.

Senator Heard emphasized that the State should have an open meetings law applying to the State, the cities, counties, school districts and other special districts and public bodies.

Senator Heard reviewed some of the research that had been done on the Brown Act and how it worked in California. The general feeling was that it went a long way to bridge skepticism and added a great deal
137 to the credibility of state government. He mentioned that Mayor Sam Yorty was dissatisfied with the bill and felt that it was too restrictive.

Senator Heard urged the committee to look carefully at amendments, and the bill might include amendments but wanted them to be careful not to "gut the bill."

Representative Ingalls, Co-Chairman, asked Senator Heard about Section 11 of the bill. He wondered if the language used was that in the California Law. Senator Heard indicated that it was.

Representative Ingalls added that he felt the major problem for the committee would be to decide what would be left out rather than what should be included.

Senator Ripper, Chairman, asked Senator Heard if caucuses were included within Section 11. Senator Heard pointed out that the Attorney General in California had a problem dealing with his central committee meetings but that they were open.

Representative Ingalls asked for clarification on what is considered a "meeting." Senator Heard told the committee that amendments would be presented dealing with the definition of a meeting at a later meeting of the committee. He added that in California a meeting definition was left up to the courts and that they were not working on any amendments to define it.

337 Mr. Lee Johnson, Attorney General, was the next witness and a sponsor of the House Bill, HB 2157, that was also under discussion for the evening. He began his testimony by stating that the bill was put in at his request and that he was not an actual sponsor. He explained the purpose of HB 2157 was to ensure the public at large and that each citizen had access to public records. He felt that Oregon's current laws did not adequately protect the public's right to know. He felt that laws like SB 206 and HB 2157 were necessary to provide better governmental policy toward public access. He said that the bill was written with these things in mind:

1. General rules should be that government records are public information and exceptions should be narrowly defined and specifically defined and only permitted where there was an overwhelming public interest in maintaining confidentiality.

2. All citizens should have equal access to government information.

3. The burden of improving the public interest should be on the government and not on the citizen to justify whenever there is a case of withholding a record.

4. Where a governmental agency improperly withholds records, every citizen should have a speedy and effective remedy and also a judicial remedy.

5. A secret meeting by a governmental body should not be tolerated as a matter of public policy.

Mr. Johnson said that he was in a position to advise the committee that he was able to indicate that both the legislative study committee of the O.N.P.A. and the O.B.A. have reviewed HB 2157 and have endorsed its contents.

He wanted to emphasize that the bill dealt with 1) open meetings and 2) open records.

Mr. Johnson addressed himself to open records first. He wanted to point out that Oregon's present law provides that all public records are subject to inspection by any citizen unless expressly exempted. He further stated that the trouble is the broad prescription in ORS 192 and that it is undermined primarily by the testimonial provision and is established by ORS 44.041 which is the executive privilege. He added that the courts have ~~the~~ limited the privilege by putting the burden of proof on the agency to establish when the public interest would suffer in not being able to see a record. He also stated, however, that this gives agencies a crutch to refuse disclosure and force the citizen to time consuming litigation.

The Attorney General mentioned the problem with ambiguity with the fact that the previous mention was a testimonial privilege and that HB 2157 clears up the ambiguity in Section3 where it makes every record public unless a specific exemption in Section 11 states it. No other exemptions are permitted.

Mr. Johnson then discussed the exemptions in Section 11. He mentioned that HB 2157 was drafted from research done from every state as well as the federal law. He explained the difference in the federal law in that it requires that there only be disclosure of public records which represent a final agency action. The proposed bill, HB 2157, does not contain such a limitation. He pointed out that the executive privilege was repealed.

Mr. Johnson then discussed some of the exemptions in the bill. He stated that he did not feel the state had to disclose real estate transactions (which are a common exemption in most states). He felt that it would place the state in a serious disadvantage.

Mr. Johnson told the committee that currently a citizen could request a document, but if not given, his only recourse is through the court system. HB 2157 proposed that a citizen can petition the Attorney General and within three days a decision is made as to whether or not the agency should disclose the record. Elected officials would have to go through the courts, there was an appeal procedure as a result of the Attorney General's decision for both the agency and the individual, and if the citizen prevailed, he could obtain attorney fees for the case if it were taken to court.

Mr. Johnson then moved on to discuss Section 12 of the printed bill. This concerned itself with public meetings. The purpose of the bill was to make a clear cut statement of public policy and with that statement, most people who serve on boards or commissions would set a prededent.

Senator Ripper asked Mr. Johnson if there might be a conflict of interest involved due to the fact that the Attorney General's office was the one designated to make disclosure decisions. He felt that because of the appeal procedure that the reason for picking the Attorney General's office was to provide the citizen a way to appeal a negative disclosure action other than through the courts.

Representative Ingalls asked if teacher/class evaluations would be made public in this bill. Mr. Johnson replied that there was the possibility of issuing such evaluations without revealing the evaluator.

Representative Ingalls also wondered about the costs to the various city/county agency budgets which do not have a large operating budget and if the phrasing "right to inspect" would be sufficient. Mr. Johnson felt that if a citizen wanted the copied record, he would pay for it. Representative Ingalls felt that in some cases, this would prohibit an individual from receiving the wanted records.

Senator Ripper mentioned the three day limitation and wondered if an equitable decision could be made within three days. Mr. Johnson indicated that this was time enougth in most cases.

Mr. Cornelius Bateson representing the State Health Division began his testimony by saying that the Health Division endorsed the concepts of SB 15 and HB 2157.

Mr. Bateson went on to discuss the amendments of the Health Division. He pointed out that there were eighteen boards connected with the Division and there were no exemptions offered for them at all. His amendments are labeled Appendix A.

Mr. Bateson felt that a Birth Certificate should be exempted. He also felt that the public as a whole does not have a legitimate interest in birth records, still births or death certificates.

Mr. Bateson also advocated a confidentiality be kept for a person who makes a complaint against a nursing home. He felt that there were enough threats of mis-service made to require such protection.

Representative Ingalls question the forms brought by Mr. Bateson and wondered why they asked the race of the applicant. Mr. Bateson said that he did not think it was illegal to ask but that it was illegal to discriminate. He further added that it was used in statistics of life expectancies and that Blacks had a shorter expectancy than Whites.

Ms. Dolres Hurtado began the testimony for Common Cause. She is the Co-Chairman of the Oregon Common Cause Policy Advisory Committee for the State and she introduced two other members representing Common Cause.

The statement from Common Cause is labeled Appendix B.

Ms. Hurtado explained that Common Cause was a citizen's lobby and was working to achieve openness and accountability at all levels of government. She felt that building public confidence was the major responsibility of government at this time and that passage of an open meetings bill was very important in restoring the public's confidence.

Ms. Blanche Schroeder, Co-Chairman for Oregon Common Cause Policy Advisory Committee, testified next. She began by stating that Common Cause supported both HB 2157 and SB 15, but that Common Cause did have some amendments to the bills. They did not include enough. Her testimony is also included within Appendix B (2/26/73).

Mr. Charles Habernigg, legal counsel for Common Cause, stated that he felt it was important to have as broad a definition as possible pertaining to what was considered a governing body. He added that the Common Cause bill they presented endeavored to do that. He also stressed the importance of defining "meeting."

Senator Heard asked Mr. Habernigg to comment on such areas as banking where certain meetings involving financial problems could cause serious problems for banks and if the Common Cause amendments provided for this. Mr. Habernigg said they did not. He felt that although there might be a problem involved but that there would be a counter balancing that would profit the public to know.

Ms. Hurtado pointed out to the committee that they were currently gathering specific examples of the problems that the people have had in gathering information and records. She said these examples would be given to the committee.

Senator Fadeley mentioned a concern about the wording in the bill and the court's ability to suspend public officials from office for violation of the law. Senator Fadeley used the example of a Corvallis governing body and how they held a secret meeting and Corvallis would not have a governing body if their bill was applied and they had been suspended. Mr. Habernigg agreed that the wording needed some clarification.

Representative Ingalls mentioned that there were newspapers who were now going to school boards and labor negotiation meetings and wondered if the bill would close the meetings that are now open. Mr. Habernigg said it would have no affect.

Representative Ingalls asked if a school board or teachers' vote could close these meetings to the press. Mr. Habernigg said that the wording did not exclude them; it stated that the public can not require by law that they be allowed in those labor relations. He felt that if a member of the press had a previous understanding, it should continue.

Representative Ingalls pointed out that with our current tax system, we pay large amounts of money to school districts and that he felt the public had the right to know what went on at those meetings. Ms. Schroeder explained that when they were researching school districts, it was pointed out to them that the public's inclusion in these meetings would seriously harm negotiations.

Representative Ingalls stated that by adding the section stating to the boards that they did not have to open the meeting, they would possibly decide to close them.

Representative Paulus requested examples of specific cases where meetings and records were not open to the public; Ms. Hurtado said they would be provided.

Mr. John Olin, Superintendent of the Bank for the State of Oregon, wished to speak to the problems that banks will have with enactment of HB 2157 and SB 15 as currently written.

Mr. Olin's testimony is labeled Appendix C (2/26/73).

Mr. John Steelhammer representing the Independent Bankers Association pointed out that the committee recognize what could be a very serious problem for the banking industry if false rumors were allowed to be circulated.

Mr. Aldon Taves representing the Citizens Bank of Corvallis, stated that he supported the Superintendent of Banks and the Banking Industry itself with respect to the importance of the confidentiality of the records they maintain.

Mr. Myer Avedovech, City Attorney for the City of Milwaukie, was asked to testify next. Mr. Avedovech stated that he took an interest in HB 2157 due to the interests of a coups of members on the City Council of Milwaukie. He felt that the idea of this type of bill was excellent and wanted to talk about a different level of government than had been discussed in the last two and a half hours that evening. That would be the area of little cities that have very few people working form them, they have very little extra monies and have some very major problems as to mechanics, operations, meetings, and accessability to the records (what they might be).

He stated that there may not be as many problems (in the area of local government) as seems to be expressed in the meeting. He felt that a lot of it was that there were not proper record keeping procedures or even records kept at all. He added that the comments he had prepared did not seem very appropriate now. He stated that there would be a number of amendments that would have a very direct effect on charters of the majority of the cities in the state and making many provisions of our charters out of line with the state's statutes which would pose problems when they could not amend the charters themselves. He stated that it would take a special election and other things that would cost a lot of money. He thought that public disclosure was very important, but that he also thought that the only way you could have effective public disclosure was to have an effective press. They are, he thought, the only ones who are really going to tell the people. He said you do not get that many citizens coming in and saying that they want to look at records. He said you get some and usually on the whole, in the city that he was associated with, they are given or shown the records if they are there. He added that if the legislature wanted to get into the criteria of what records must be kept and which ones were proper to be kept, and how you record your citycouncil meetings, and do you, in fact, transcribe these into written form within 24 or 48 hours, that would be another matter. That would not be public disclosure, it would be a requirement that certain items must be kept.

He went on to say that in his city, for example, records are taken on a tape recorder and are not transcribed because they did not have the personnel or the time to do it. He did say that a short version of minutes was made the week afterward and that anyone wishing to listen to

the tape they could, but it was not allowed out of the City Hall for fear of being destroyed. He said that as a small city, they could not afford to have a staff to reproduce the exact minutes of the meeting the next week in detail. He added further that most of the cities face that practical problem.

He stated that he had a lot of comments about the bill that Common Cause proposed but would submit them in written form to the committee at a later time. He stated that he was concerned with the phrasing about attorney/client privileges; he said that he did not really know what the role of the city attorney would be in the bill. He felt that in one of the sections in the House Bill, the District Attorney handled everything unless the matter was appealed beyond his decision. In other words, he added, if he supported the city's refussal and was refused, then he would only represent the people that he would normally represent; and he does not normally represent cities or city counsils; therefore, he assumed that the city attorney would com in at that level. He did not know.

He mentioned the problem of fee and if you would pay the District Attorney. He added that the three day limitation would cause a problem for his city because it sometimes took four days for mail to go from Milwaukie to Portland and back again. He didn't feel that the Attorney General could even get the material within three days let alone render an opinion.

Mr. Avedovech also wondered what he was going to consider in the material and if he would take a document, a tape recording, or a piece of paper and decide whether it was in the public interest or if he was going to hear the government body's or agency's reason for not wanting to disclose this or why it would affect the public. Is this going to be a written document or an oral conversation on the phone, or if the head of the agency or city council or city manager was going to have to visit with the Attorney General and tell him why the records were not submitted. He wondered how all of this could be done within three days.

Mr. Avedovech also mentioned that he was concerned with the wording of "all public records" and if his litigation file was considered a public record. He stated that planning commissions were also included within the public meaning definition along with civil service commissions, budget committees and other areas and that in his city, there was very little turn out for those meetings. He further stated that in his city, a civil service commission meetings were held in a room with four chairs (three members and himself).

The Milwaukie attorney also wondered what would happen if he would go skiing with three council members in the same car and what would be required if they would talk about city matters; was that a public meeting because there were more than two people? He said that

no formal decisions would be made but that naturally there would be talk which might be the basis for some decision that was going to be made.

He stated that he was in support for openness in government and in the meetings and that their council has pre-meetings to hear if there were any unusual things that were going to happen that people did not know about. Here they would also pass out last minute material or something they would want to consider. They might also mention if someone was not going to be there and then they would go upstairs and meet. He said that it may be illegal or may be it was not. He felt that it would not be illegal because they did not do anything except listen and get some facts. He said that he felt there were some very serious implications in the bill to the municipal levels of government. He added that he could appreciate the bill and that there were cases of hidden documents but he thought that the economic effect that would be imposed upon many cities and the enforcement of this type of legislation would have to looked at carefully.

Representative Paulus wondered if the press was invited to these pre-meetings. Mr. Avedovech said they were invited but most chose not to attend and then would state that they were closed. He added that they usually had one reporter.

Representative Paulus wondered why that business could not be conducted in the regular public meeting. He responded by saying that it could be but would add an extra hour to the length of the meeting. It was a way to sit down informally and discuss, for example, whether a person was going to be there or tell the council beforehand that a report did not get done and should be taken off the agenda. They take it off the agenda officially at the meeting and say that the staff did not get it done but doing it earlier saves time.

Senator Carson asked if the pre-meeting made the later meeting run smoother and did it give a spontaneity to the meeting. Mr. Avedovech said that before he was the attorney for the city the meetings were "flattened" but not since he had been there (13-14 months). He said he could guarantee that the "barbs" have not been removed and that it was really an informational meeting to have a chance to provide the council with material on a Thursday for a Monday meeting. He stated that things would come in over the weekend and copies would have to be made for the Monday meeting.

Senator Carson asked if he ever thought what a pre-meeting like theirs looked like to the community and if they had received any feedback from it. Mr. Avedovech said that he has received a lot of criticism about that but most of it was because of a lack of knowledge.

He added that there was not 100% attendance at the pre-meeting and that some of the members did not feel that they could attend those (although one used too).

He said that the press was invited to the pre-meeting and that the appearance of the meeting did not matter to him because he had to be there forty-five minutes early.

Senator Fadeley wanted to point out that what he talked about would suggest an inconvenience for him and that some of the examples given were not going to be covered by the bill. He said he brought this up because of Mr. Avedovech's attitude and that he thought it was felt that the public would be a bother in their decision making process.

Mr. Avedovech said he did not want to give that impression and that he did not mind the public being present. He said the reason he came to the committee meeting was to get some questions answered for himself and that it would be he that would be asked for clarification of the bill. He mentioned a concern about the public records section of the bill but that he could understand the open meetings section.

Senator Fadeley then suggested that he could help the committee by deciding the fine line that needed to be made between a meeting and a discussion. Mr. Avedovech agreed with the difficulty of the problem and suggested that it could not be done and was very hard to do.

Representative Paulus asked how the members knew what time to attend the meetings. Mr. Avedovech said that it was announced at the council meeting and it was also common knowledge. He added that no written notices were sent to council members or for any other meeting excepting a special meeting. He said that notices were in the papers and that the meeting hour was set.

SIDE 1 TAPE 2 000 Mr. Russ Abolt, Assistant to the City Manager of Salem, testified and his statement is labeled Appendix E.

Representative Lindquist asked Mr. Abolt that there was a public meeting after labor negotiations once got to a certain point and a conclusion had been decided. Mr. Abolt agreed.

156 Mr. Pete Fleissner, Executive Director of the Oregon Association of Hospitals, represented 17 district hospitals, 7 county hospitals, 1 state owned hospital and 2 city-owned hospitals. He stated that currently the ordinary business of these hospitals was carried on in the public eye, but could see some problems that he wished to point out.

Mr. Fleissner continued his testimony and said that the major problem found in both bills related to medical staff functions, peer review of doctors, clinical review of records and all matters that are taken down on paper, and where physicians were asked to be candid about other physicians. He felt that there would be some information which would be extremely damaging to an individual when the press was present. He was certain that some of that information would be misunderstood.

214 Senator Fadeley wondered if it was the practice of the medical profession to shield against the governing body for getting involved in the decision process of the governing body.

Senator Fadeley wondered, too, if the governing body in one of those hospitals would refuse a doctor to practice there. Mr. Fleiwsner said that it was the only governing body that could make that type of decision. Mr. Fleissner said that if a physician had a high death rate, this would be noted in the medical audit and reported to the board. He felt that few people would understand a high death rate. He illustrated an example of two doctors that both had high death rates. Where it would be acceptable for a heart specialist, it would be unacceptable for a dermotologist. He felt these figures would be misunderstood.

Mr. Fleissner also mentioned a danger when a hospital would be discussing specific bids on mechanical equipment and that he wondered if bids should be seen before the opening of the actual bidding.

Mr. Fleissner also mentioned that he felt a physician's disciplinary actions (that were against him) should not be made a public record.

Representative Ingalls wondered if they had public meetings at the current time. Mr. Fleissner said that they did. He said further that their board meetings and budget meetings were open.

Mr. Fleissner voiced a concern that a patient/employee confidentiality should be protected from the public and that meetings pertaining to this area should be closed.

Representative Dereli asked what the board would do if in a closed meeting they found a doctor with a high death rate and a high infection rate and what they would do. He said that when a situation like that reached the board level, the physician receives a hearing. Then on recommendation of the medical staff, the board finds that the physician is not competent, they might terminate his practice until something is done about them.

Senator Ripper asked at what point the deliberations about a staff member are made public. Mr. Fleissner said that the final action of the board was made public if he were suspended.

Senator Fadeley moved to have the committee work on SB 15 as the vehicle for writing an open meetings bill. He also made the motion to make open meetings and open records two separate issues and incorporate amendments. The motion was voted on and carried.

Respectfully Submitted,

Loretta Hill

Tape 2. Side 1. 000-389 (PG. 10, MINUTES -- BEGINNING W/ RUSS ALBOT)

Tape 2. Side 2. 000-end (PGS. 1-10 MINUTES)

4. Scheduling of Meetings or Location. Mr. Piniarich stated that these two variables can cause a closed meeting. He used the example of closed work sessions and that there were enough instances where these should have been public.

Mr. Piniarich concluded his testimony by stating that SB 15 was a step that should be taken so that the public was involved in the decision making process.

Mr. Bruce Kerr representing the Oregon Association of Broadcasters was the next witness. He is the Chairman of their Legislative Affairs Committee. Mr. Kerr mentioned that they were asked to study the Attorney General's bill, HB 2157. He pointed out to the committee that SB 15 was a fine bill and that they were in strong support. The witness urged the committee to incorporate the Attorney General's proposal into the bill that was reported out.

Mr. Kerr continued his testimony by stating a concern for the clause about real property. He felt that the amendment proposed should be changed. He said that the people "in the know" are aware of business situations that the public is not and that the "little people" get the disadvantage.

Mr. Reed Garrison representing the Oregon Potato Commission stated that they wanted to offer a minor amendment to HB 2157. He further stated that upon receiving a copy of SB 15 and the amendments provided, they were in total support of the bill. The amendments proposed removed their objection.

Mr. Judah Bierman representing the American Civil Liberties Union supported SB 15. His written testimony was given to the committee and is labeled Appendix C (3/5/73).

Mr. Bierman advocated executive sessions under the provisions which were listed within his printed statement.

Ms. Dolores Hurtado, Co-Chairman of the Policy Advisory Committee for Common Cause, testified. The Common Cause written testimony is labeled Appendix D (3/5/73). She reiterated her concern about the definition of "meeting" and "public body" and felt that they were not specific enough. She commented that if these definitions were clearer, it would avoid most of the problems that might arise.

She included within the Common Cause testimony some comments pertaining to the Florida law and that it was more restrictive than the one being proposed in Oregon. She added that the interpretations by the courts have been broad and widesweeping and that they have leaded toward including more people and more meetings.

Testimony -- Open Records -- HB 2157

Work Session -- Open Meetings -- SB 15

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Joint Special Committee on Professional Responsibility

April 16, 1973 7:00 p.m. Room 321 Capitol

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Members Present: Representative Robert Ingalls, Chairman

Representative Edward Lindquist, Vice Chairman
Representative Margaret Dereli
Representative George Cole

Senator Fred Heard
Senator Thomas Hartung
Senator Edward Fadeley

Members Delayed: Senator Jack Ripper, Co-Chairman
Representative Norma Paulus

Members Absent: Senator Wallace Carson

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Witnesses Present: Mr. Lee Johnson, Attorney General, Salem, Oregon
Mr. Charles Gill, Manager, State Accident Insurance Fund, Salem, Oregon
Mr. Michael Papadopolous, Oregon State University, Math Department, Corvallis, Oregon
Mr. Pete Fleissner, Oregon Association of Hospitals, Salem, Oregon

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Representative Robert Ingalls was the chairman for the evening meeting. Chairman Ingalls began by explaining the agenda would be testimony by the Attorney General, Lee Johnson, giving amendments from various state agencies to HB 2157 and a work session on SB 15.

House Bill 2157

Chairman Ingalls began the meeting by pointing out to the committee that there were nineteen conflicting pieces of legislation with HB 2157.

Mr. Lee Johnson, Attorney General, began the testimony. He explained that he was testifying on behalf of the state agencies that were concerned with Open Records and House Bill 2157. Mr. Johnson submitted a copy of the agency's amendments to each committee member and it is included and labeled Appendix A (4/16/73).

Mr. Johnson felt that the agencies had been contacted and he was going to present to the committee a united view of the bill. He presented thirteen amendments. He mentioned that two agencies were not included within the amendments; the Personnel Department and the Geology Department.

Mr. Johnson went on to say that he felt the State Accident Insurance Fund should have a chance to speak on the bill. Mr. Charles Gill, manager, would testify later.

The Attorney General pointed out to the committee the necessity for having the Attorney General's office and the District Attorney's office be available for administrative review. He felt that the public did not know what recourse to take if they were forbidden records and that it was a public service. He added that the committee might want direct judicial review instead of administrative review. Legislative Counsel was mentioned as an alternative. Mr. Johnson felt that his office would be consulted in any event.

Chairman Ingalls requested that Mr. Johnson go through the amendments to each section. He also requested comments from the committee. Chairman Ingalls suggested that the Attorney General go through HB 2157 with the committee and point out the amendments.

Representative Cole wondered about section 5 (1) and the language "is bound to give him,". He wondered if "shall" could be used. Mr. Johnson agreed.

Mr. Johnson moved to section 6. This section provides for review by the Attorney General. The burden of proof is on the agency and stressed this aspect as important to the bill. He added that issuing a statement within three days would not be a problem for the Attorney General's office. Sub section (2) dealt with court appeal by agency or individual.

Section 7 provides that in local agencies, the District Attorney would be the consulting agency. He added that the city attorney was not included because he felt that there would be too many conflicts that might interfere. He also felt that there was a possibility that a city attorney might not give as objective an opinion as possible. He concluded discussion on this section by stating that the administrative review section was not perfect, but that he felt it would be difficult to find an arm of government that would be independent in making these decisions and that the people had the right to appeal.

Mr. Johnson moved to section 8 and proposed it. This applies to records of an elected official. There is no administrative review except through the courts. It was felt that too great a conflict would exist to have an administrative review.

Section 9 provides attorney's fees if the citizen prevails in court.

Section 10 relates to the form necessary for administrative review.

Section 11 was next. Sub section (1) (a) should be compared to section 13. This section repeals the public official from deciding what is a confidential communication and what is not. Sub section (1) (b) deals with public records which relate to litigation. They wanted this exemption because government would be at a disadvantage otherwise. Sub section (1) (c) deals with personnel files, medical files, and similar files. This would protect these records and personal privacy. He added that the files were not protected from the subject of the files.

Chairman Ingalls wondered if there would be a conflict if an individual's file were part of litigation proceedings. Mr. Johnson felt there might be but that the file would be confidential until the individual asked for it, then it would be provided. He added that any personnel information from a former employer would be confidential. If a letter is determined important evidence, then it would have to be submitted.

Sub section (1) (e) is designed to cover the exemption of trade secrets. Sub section (1) (f) deals with assurance that information for criminal law purposes is confidential.

Mr. Johnson moved to (1) (h) and he said that it was designed to cover records that were kept to determine a fee. Sub section (1) (i) dealt with real estate property and bids.

Chairman Ingalls posed a question regarding bids and if they could be open to the public before the opening of bidding. The Attorney General felt that this question should be discussed by the committee.

Mr. Johnson said that (k) referred to pre-sentence reports. Sub section (1) related to records of the Corrections Division. Sub section (m) related to the ORS statutes and Mr. Johnson identified the exclusions.

Senator Ripper mentioned to the committee that it might be a better idea to remove all exclusions that you do not want rather than leaving in some. This would save time and mistakes would not be so frequent.

Mr. Johnson moved on in section 11 (3) (a) which deals with the Governor's Office and that this section could be termed an escape hatch. The Governor can exempt any class of records.

The Attorney General began reading through the amendments to HB 2157. (Please refer to Appendix A -- 4/16/73).

Mr. Johnson felt that Mr. Charles Gill, Manager of the State Accident Insurance Fund, should testify on amendment #10 on his own behalf.

The Attorney General added that his office agreed with the amendments from the agencies with the exception of amendment #11. This amendment related to the State Accident Insurance Fund. He added that he also opposed amendment #12. He felt that administrative review of public records was the big flaw of all public records legislation. Mr. Johnson stated that administrative review should be tried for a couple of years.

Senator Heard asked that the Attorney General quickly state the records that were opened up. Mr. Johnson stated that there were few opened up; these were the ones where there were no laws regulating them and that there had previously been no authority to provide. He added that the major factor in the bill are the records that were repealed in the bill.

Representative Cole wondered if city charters were covered within the bill. Mr. Johnson said that there was no problem with city charters.

Chairman Ingalls referred to section 14. Mr. Johnson said that they were repealing this section because it had been the crutch of state agencies. He added that the section would be modified.

Mr. Charles Gill, Manager of State Accident Insurance Fund, testified on HB 2157 on behalf of the S.A.I.F.

He felt that the SAIF was in a unique situation as a state agency because they compete with private enterprise. He said they were concerned in two particular areas. The first involves employer accounts and records that are kept on file. He felt that the employers would not support a bill that would let their files be public record to their competitors. The second major area of concern deals with dividends as they are related to Workmen's Compensation Insurance. The dividend schedule is highly confidential. If these were public, it would jeopardize workmen's compensation insurance and also competitiveness. Information is not given out unless it has been authorized by the employer involved.

Mr. Michael Papadopolous from Oregon State University in Corvallis, Oregon testified to specific sections of HB 2157.

He began his testimony by referring the committee to section 5. This section referred to computer data. He stated that there is a lot of information already in the computer that could be utilized. He said that

information could be received in a variety of forms from a computer. He submitted the following language to be an amendment to section 5:

> "Data shall be provided in any form suitable to the computer at the request of the person requesting the data."

Mr. Papadopolous moved on to section 11 of the bill. He felt that this section was too complicated and that the burden of proving confidentiality of records should be left to the state agency. He suggested deleting the first qualifier in section (1) and say:

> "The following public records are exempt from disclosure."

He felt that this amendment made the first sub section of section 11 less complicated.

He added that in section 11 (1) (c) he did not like the word "unreasonable". Mr. Papadopolous stressed the burden should be on the agency. The burden issue also related to (d) in section 11 (1). He added that the committee should study what kinds of information the state agencies are seeking from their consultants and if this information (or the informer) should be confidential. Mr. Papadopolous pointed out that he did not feel that any information that was given to the state agencies should be completely protected from the public. He felt that some information should be open.

Chairman Ingalls closed the hearing on HB 2157 and opened the Work Session on SB 15.

Senate Bill 15

Mr. Pete Fleissner from the Oregon Association of Hospitals in Salem, Oregon testified on SB 15 and proposed an amendment.

He wished to include in exemptions various committees of the hospitals which he felt needed to be included. The committees meet with the interests of the patients in mind; he added that if they were not included, it would be adverse to the bill.

Mr. Fleissner felt that the board meeting of the hospital should be open to the public. He added that part of that board meeting dealing with medial matters be in executive session.

He pointed out to the committee his amendment. It would amend section 6 of the bill, line 6, on page four. The amendment would read:

WORK SESSION -- HB 2157
HB 2530

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HOUSE COMMITTEE ON PROFESSIONAL RESPONSIBILITY

May 14, 1973 7:00 p.m. Room 319

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Members Present: Chairman Robert Ingalls
Representative Edward Lindquist
Representative Margaret Dereli
Representative George Cole

Members Delayed: Representative Norma Paulus

==========

Witnesses Present: Mr. Lee Johnson, Attorney General, Salem, Oregon
Mr. Dick Allen, Capitol Club, Salem, Oregon

==========

Chairman Ingalls called the meeting to order at 7:05 p.m. in Room 319 of the capitol. He announced that the first thing the committee would work on would be amendments to HB 2157 relating to open records.

House Bill 2157 (0005)

Mr. Lee Johnson, Attorney General, brought some proposed amendments to the committee and began an explanation of the amendments for the committee. He added that amendments that were suggested at the last hearing had been included as well as amendments proposed by the American Civil Liberties Union. The amendments proposed related to section 11 of the bill. This section related to exemptions to public records. The records concerning litigation, trade secrets, investigatory information, test scores, production and business records, statuatory fees, authorizations on certified people, and communications between employees. This only applies when the public interest clearly outweighs the need to keep confidential. Mr. Johnson continued through the bill with the amendments and the committee asked for clarification when necessary.

Chairman Ingalls mentioned that an exemption was left out of the amendments relating to hospitals. The ORS that was left out was 41.675.

Mr. Johnson stated that when there is some information that should be made public and some that is exempt, the Secretary of State's Office would make the determination of what was to be disclosed. This was a suggestion from the American Civil Liberties Union.

Mr. David Frohnmayer, University of Oregon Law Professor, wished to make a statement to the committee representing himself. He voiced a concern in section 11 where the bill provided that the public interest be the test of disclosure. The Attorney General stated that this concern was valid and it had been taken out of the bill under his amendments.

Mr. Thomas Enright, Oregon State Employees Association, was asked if he wished to comment on the amendments. He voiced a concern over the exemption of personnel records being public. He said the purpose of keeping these records confidential was a good one, but he was afraid that the bill would make things more restrictive than they are now. He stated that in cases of litigation, it is desirable to receive some information from the personnel files. He added that possibly salaries and classifications might be open records.

Mr. Enright voiced another concern with the bill relating to a person's own personnel file. He stated that the Board of Higher Education has made rules preventing a professor from seeing his own file. He stated that a person should be able to see his own personnel file and should be able to see files of people in similar situations.

Mr. Enright referred to HB 2496 relating to personnel records and wondered if it was in this committee. He suggested the possibility of referring it. He added that it was a controversial subject and that files should be open to the individual involved.

Chairman Ingalls suggested that the bill in Judiciary be dealt with in that committee. He added that putting matters of personnel files of people in higher education into HB 2157 would possibly jeopardize the passage of the bill.

Mr. Enright mentioned that if the bill passes, it might be that when problems arise between now and the next session, an amendment or new bill could be considered.

Mr. Ward Armstrong, representing Weyrhauser Company, voiced a concern in section 11 sub section (d) relating to submitting information to a governmental body in confidence and not otherwise having to be submitted, and was afraid that the information

could be made public. He referred to information that his company might give the government regarding the appraisal of property.

Mr. Armstrong referred the committee to an amendment to this section. He felt that the amendment was a good change and related to his concern; he did offer subsequent language to the amendment that would not have any effect on its meaning.

The Attorney General commented that at the administrative level, information that was not required would probably be kept confidential.

Chairman Ingalls mentioned that he would entertain a motion to accept the amendments to section 11 as proposed by the Attorney General. Representative Paulus so moved. The vote was taken and the motion passed. The amendments were dated May 11, 1973.

Mr. Johnson went to other areas of the bill and mentioned that the references to computer data in section 5 had been removed from the bill. He stated that the rest of the amendments were mostly housekeeping amendments.

The Attorney General addressed himself to section 8 of the bill and stated that the section called for court interpretation instead of that by the Secretary of State's Office in cases of elected officials. This, he felt, was necessary to avoid any possible conflicts of interest. The Attorney General suggested that it be taken out. The chairman took a consensus of the committee, and they decided to leave that section in the bill.

It was mentioned that section 12 was taken out of the bill.

There was more discussion from the Attorney General's Office and the committee over the amendments. Representative Dereli made a motion that the committee adopt the amendments provided by the Attorney General to HB 2157. The vote was taken, the motion passed.

Representative Paulus made a motion to send HB 2157 to the floor of the House with a do pass with amendments recommendation. Chairman Ingalls asked Representative George Cole to carry the bill for third reading.

House Bill 2530 -- Lobbying Regulations

Chairman Ingalls opened the work session on HB 2530 with the comment that he would like some general statements about the bill before the committee actually went into too much detail.

946 Senator Carson mentioned a lot of waste may be due to ignorance on the part of the agency. He stated that the agencies may not know the printing procedure enough to realize what actual costs may be involved.

960 Chairman Ripper mentioned that the bill had conflicts and that a bill could be substituted that would be short and deal with the subject in a better manner.

The other committee members agreed with Chairman Ripper. There was much discussion about who would be on the board and what their function would be.

1006 Senator Carson mentioned that the printing industry should be included on the board and that their input would be beneficial.

1027 Chairman Ripper mentioned that he would contact Legislative Counsel and would have a bill drawn up to cover the concerns of the committee. He stated that a smaller bill would also have more possibility of passing the Houses of assembly.

1050 Mr. Jim Durham, Attorney General's Office, testified in favor of the bill and gave suggestions on what the Department of Justice does relating to publications that are given to the public and the ones that are charged for.

1112 House Bill 2157

Chairman Ripper opened the work session on HB 2157 relating to open records.

1117 Mr. Jim Durham, Attorney General's Office, testified and gave information on the engrossed printed bill as the house passed it. He summarized the bill and stated that there was no opposition to the bill in the house.

There was much discussion about personal correspondence files and if they would be subject to the public. It was decided that this would be a personal interpretation as well as a court interpretation.

1288 Mr. Mike Popodopolous, testified on the bill and offered some suggestions for change. He was glad to see the direction that the bill was going, but thought it still could be amended. He stated that he did not feel the Attorney General's Office should be the one to determine if a record was public information.

1395 Mr. Popodopolous added that he feared that the new language would create loopholes that he was afraid of.

1432 Mr. John Gustafson wished to point out some amendments to the bill that the Labor Commission would like to see adopted. He pointed out that on page 6 of the engrossed bill any agency dealing with law enforcement agencies should be confidential. He wanted to submit this addition.

There was discussion about keeping information confidential before a decision was made on a trial case. It was stated that opening a record might change the outcome of a trial if it was done before a trial was over.

1508 It was mentioned that for timing purposes, sometimes information should not come out before a certain time.

1534 Mr. Ted Hughes, lobbyist, testified that he agreed with Mr. Popodopolous but that he did not feel the bill should be amended. He agreed with the concept and felt that any malfunctions of the bill would present themselves as the bill went into effect.

1566 Mr. Roger Williams, Oregon Newspapermens Publishers Association, testified that the bill probably should not be amended. He supported HB 2157. He stated that every record that could be open to the public should be open to them.

The committee discussed the bill more and decided that they might study the area of personal, internal communications more. Internal communications should be more confidential than external communications.

Chairman Ripper adjourned the meeting at 10:00 p.m.

Respectfully submitted,

Loretta Hill, Clerk

Tape 13. Side 2. 1254-1397

HB 2157 SB 871 SB 145 SB 824

JOINT SPECIAL COMMITTEE ON PROFESSIONAL RESPONSIBILITY

Minutes

June 18, 1973 7:00 pm Room 321 Capitol

Members Present: Senator Jack Ripper, Chairman
Senator Wally Carson
Senator Heard

Members Absent: Senator Edward Fadeley
Senator Thomas Hartung

1257 Chairman Ripper opened the meeting at 7:10 p.m. in Room 321 of the Capitol. He explained that the committee was going to work on HB 2157 and SB 871.

1260 House Bill 2157

Chairman Ripper began the work session on HB 2157 by discussing the conflicts with the bill and what was being done to correct them. There was discussion on the correct procedure to follow in order of passing bills so that the conflicts are resolved as the bills become law.

There were some amendments proposed by Legislative Counsel that would amend the bill to fix conflicts with HB 2101. The committee discussed these amendments and asked Attorney General, Lee Johnson, his opinion of the amendments.

1305 Senator Fred Heard moved to adopt the amendments that would correct conflicts with HB 2101 and were dated June 18, 1973.

The vote was taken; the admendments were adopted. Exhibit 1 included.

1314 Chairman Ripper referred the committee to some amendments proposed by the Bureau of Labor. Jim Durham and Attorney General, Lee Johnson, were asked their opinion of the amendments. They stated that they were not necessary to the bill but did not harm it.

1318 Senator Fred Heard moved to adopt the amendments proposed by the Bureau of Labor dated June 11, 1973. Exhibit 2 included.

The vote was taken; the amendments were adopted unanimously.

1332 Senator Fred Heard moved to send HB 2157 to the floor with a do pass as amended recommendation.

The vote was taken; the motion passed unanimously.

1340 Senate Bill 145

Mr. Grattan Kerans, administrative assistant, explained that this bill dealt with conflict of interest and could be tabled. He explained that the vehicle for conflict of interest, HB 2529, was going to be up for third reading in the House.

1344 Senator Wally Carson moved to table SB 145.

The vote was taken; the motion passed unanimously.

1349 Senate Bill 824

Grattan Kerans explained that SB 824 relating to obscene writing could be tabled because there were other bills passing or being worked on that would cover our bill.

1349 Senator Wally Carson moved to table SB 824.

The vote was taken; the motion passed unanimously.

1354 Senate Bill 871

Chairman Ripper mentioned that there was a bill coming from Legislative Counsel to substitute for the original bill. It would be a two-page bill and should be passed. The committee decided to have a noon meeting when the committee received the bill and work on it then. Representative Ingalls, Co-Chairman of the Committee, was asked if he would be in attendance in order to speak for the House committee members.

The committee discussed their actions on HB 2529 and HB 2530. It was mentioned that these would be worked on as soon as they passed the House for third reading.

Chairman Ripper adjourned the meeting at 7:45 p.m.

Respectfully submitted,

Loretta Hill, Clerk

Tape 14. Side 1. 000-203

Work Session: HB 2157 HB 2529

JOINT SPECIAL COMMITTEE ON PROFESSIONAL RESPONSIBILITY

June 20, 1973 12:30 p.m. Room 409

Members Present: Senator Jack Ripper, Chairman
Senator Fred Heard
Senator Wally Carson

Members Delayed: Senator Thomas Hartung

Members Absent: Senator Edward Fadeley

Witnesses Present:

HB 2157 - Lee Johnson, Attorney General, Salem

Chairman Ripper called the meeting to order at 12:35 p.m. in Room 409 of the capitol. He explained that the committee would work on HB 2157 and HB 2529.

0025 House Bill 2157 - Relating to Open Records

Chairman Ripper explained that the amendment adopted by the committee at a previous meeting proposed by the Labor Commission needed to be deleted from the bill and a substitute amendment be adopted that would result in the same change.

064 Attorney General, Lee Johnson, proposed a new amendment to HB 2157 and stated that the amendment would do the same thing as the previous one that was adopted. He stated that the first amendment hurt the bill and gave it a loophole that needed to be closed.

The committee discussed the change in the amendment and they agreed to follow the lead of the Attorney General.

120 Senator Heard moved to delete the previously adopted amendment.

The vote was taken; the motion passed.

129 Senator Heard moved to adopt the amendment proposed by the Attorney General to HB 2157. Exhibit 1 included.

The vote was taken; the bill was amended.

129 Senator Heard moved to pass the bill out of committee with a do pass as amended recommendation.

The vote was taken; the motion passed.

Senator Ripper suggested that Senator Thomas Hartung carry the bill for third reading.

143 House Bill 2529

144 Senator Ripper mentioned to the committee that the minority reports were adopted in the House. The majority report will be on third reading Thursday, June 21, 1973.

Chairman Ripper suggested that the committee work on HB 2529 at a 12:30 p.m. meeting on Thursday and Friday. He also suggested working on SB 871 that was to come from Legislative Counsel.

154 Grattan Kerans, administrative assistant, reviewed the minority amendments adopted to HB 2529.

203 Chairman Ripper adjourned the meeting at 1:00 p.m.

Respectfully submitted,

Loretta Hill, Clerk

# CROSS REFERENCE SHEET

BY OREGON STATE ARCHIVES

**NAME** JOINT PROFESSIONAL RESPONSIBILITY COMMITTEE (SPECIAL) **DATE** 27 February 1975

**SUBJECT** HOUSE BILL 2157

**SEE** ALSO SUBJECT FILE "OPEN MEETINGS" WHICH INCLUDES MATERIAL ON SENATE BILL 15

HB 2157 CONFLICTS

2/19/73

May conflict with:

| | |
|---|---|
| S | 32 |
| H | 2101 |
| H | 2115 |
| H | 2033 E |
| H | 2279 |
| S | 43 |
| S | 269 |
| H | 2004 |
| H | 2132 E |
| H | 2399 |
| S | 275 E |
| H | 2001 |
| H | 2477 |

LEE JOHNSON
ATTORNEY GENERAL

STATE OF OREGON
DEPARTMENT OF JUSTICE
SALEM, OREGON 97310

April 6, 1973

Mr. Thomas C. Enright
Executive Secretary
Oregon State Employees Association
1127 Twenty-Fifth Street S.E.
Salem, Oregon 97301

Dear Mr. Enright:

This is in response to your letter of February 28 regarding House Bill 2157. Senator Ripper advises me there will be a hearing on this bill at 7 p.m. on April 16.

It was not inadvertance to repeal ORS 240.110 and 240.120. The purpose of House Bill 2157 was to have one all-encompassing public records law which is set forth in Section 3 of this bill.

I can understand your concern that agencies might rely on the crutch of personal privacy as a means of denying access to certain records. However, it is clear that it does not constitute any invasion of privacy to reveal to an employee his own personnel record. Consequently any employee demanding such a record clearly would be entitled access under this bill. If the bill passes, we will gladly send a letter to the agencies and to you stating that this is our view so that no misunderstanding will arise.

I hope this will satisfy your objections.

Yours very truly,

LEE JOHNSON
Attorney General

LJ:bjm

cc: Senator Ripper

From Ruth Brewer
To: Jack Ripper
California

May 9, 1969

# MEETINGS OF LOCAL PUBLIC AGENCIES (BROWN ACT)

Chapter 9, Division 2 of Title 5 of the Government Code, originally enacted by Statutes of 1953, Chapter 1588, page 3269, section 1, as amended (popularly referred to as the "Brown Act" or "Secret Meeting Law").

## Section 54950. Declaration of public policy

In enacting this chapter, the Legislature finds and declares that the public commissions, boards and councils and the other public agencies in this State exist to aid in the conduct of the people's business. It is the intent of the law that their actions be taken openly and that their deliberations be conducted openly.

The people of this State do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created.

## Section 54950.5. Title of act

This chapter shall be known as the Ralph M. Brown Act.

## Section 54951. "Local agency"

As used in this chapter, "local agency" means a county, city, whether general law or chartered, city and county, town, school district, municipal corporation, district, political subdivision, or any board, commission or agency thereof, or other local public agency.

## Section 54951.1. Public meetings by antipoverty organizations

For the purposes of this chapter, and to the extent not inconsistent with federal law, the term "local agency" shall include all private nonprofit organizations that receive public money to be expended for public purposes pursuant to the "Economic Opportunity Act of 1964" (PL 88-452; 78 Stat. 508). [Added by Stats. 1967 ch 1384 § 1.]

Section 54952. "Legislative body"

As used is this chapter, "legislative body" means the governing board, commission, directors or body of a local agency, or any board or commission thereof, and shall include any board, commission, committee, or other body on which officers of a local agency serve in their official capacity as members and which is supported in whole or in part by funds provided by such agency, whether such board, commission, committee or other body is organized and operated by such local agency or by a private corporation.

Section 54952.3. "Legislative body": Meetings

As used in this chapter "legislative body" also includes any advisory commission, advisory committee or advisory body of a local agency, created by charter, ordinance, resolution, or by any similar formal action of a governing body of a local agency.

Meetings of such advisory commissions, committees or bodies concerning subjects which do not require an examination of facts and data outside the territory of the local agency shall be held within the territory of the local agency and shall be open and public, and notice thereof must be delivered personally or by mail at least 24 hours before the time of such meeting to each person who has requested, in writing, notice of such meeting.

If the advisory commission, committee or body elects to provide for the holding of regular meetings, it shall provide by bylaws, or by whatever other rule is utilized by that advisory body for the conduct of its business, for the time and place for holding such regular meetings. No other notice of regular meetings is required.

"Legislative body" as defined in this section does not include a committee composed solely of members of the governing body of a local agency which are less than a quorum of such governing body.

The provisions of Sections 54954, 54955, 54955.1, and 54956 shall not apply to meetings under this section. [Added by Stats. 1968 ch 1297 § 1.]

Section 54952.5. Same

As used in this chapter "legislative body" also includes, but is not limited to, planning commissions, library boards, recreation commissions, and other permanent boards or commissions of a local agency.

Section 54952.6. "Action taken"

As used in this chapter, "action taken" means a collective decision made by a majority of the members of a legislative body, a collective commitment or promise by a majority of the members of a legislative body to make a positive or a negative decision, or an actual vote by a majority of the members of a legislative body when sitting as a body or entity upon a motion, proposal, resolution, order or ordinance.

Section 54953. Meetings to be open and public

All meetings of the legislative body of a local agency shall be open and public, and all persons shall be permitted to attend any meeting of the legislative body of a local agency, except as otherwise provided in this chapter.

Section 54953.3. Registration, etc., not to be required as condition for attendance by member of public at meetings

A member of the public shall not be required, as a condition to attendance at a meeting of a legislative body of a local agency, to register his name and other information, to complete a questionnaire, or otherwise to fulfill any condition precedent to his attendance.

Section 54954. Rules for conduct of business

Time and place for holding regular meetings. The legislative body of a local agency shall provide, by ordinance, resolution, by-laws, or by whatever other rule is required for the conduct of business by that body, the time for holding regular meetings. Unless otherwise provided for in the act under which the local agency was formed, meetings of the legislative body need not be held within the boundaries of the territory over which the local agency exercises jurisdiction. If at any time any regular meeting falls on a holiday, such regular meeting shall be held on the next business day. If, by reason of fire, flood, earthquake or other emergency, it shall be unsafe to meet in the place designated, the meetings may be held for the duration of the emergency at such place as is designated by the presiding officer of the legislative body.

Section 54955. Adjournment of meetings

The legislative body of a local agency may adjourn any regular, adjourned regular, special or adjourned special meeting to a time and place specified in the order of

adjournment. Less than a quorum may so adjourn from time to time. If all members are absent from any regular or adjourned regular meeting the clerk or secretary of the legislative body may declare the meeting adjourned to a stated time and place and he shall cause a written notice of the adjournment to be given in the same manner as provided in Section 54956 for special meetings, unless such notice is waived as provided for special meetings. A copy of the order or notice of adjournment shall be conspicuously posted on or near the door of the place where the regular, adjourned regular, special or adjourned special meeting was held within 24 hours after the time of the adjournment. When a regular or adjourned regular meeting is adjourned as provided in this section, the resulting adjourned regular meeting is a regular meeting for all purposes. When an order of adjournment of any meeting fails to state the hour at which the adjourned meeting is to be held, it shall be held at the hour specified for regular meetings by ordinance, resolution, bylaw, or other rule.

Section 54955.1. Continuance of hearing to subsequent meeting

Any hearing being held, or noticed or ordered to be held, by a legislative body of a local agency at any meeting may by order or notice of continuance be continued or recontinued to any subsequent meeting of the legislative body in the same manner and to the same extent set forth in Section 54955 for the adjournment of meetings; provided, that if the hearing is continued to a time less than 24 hours after the time specified in the order or notice of hearing, a copy of the order or notice of continuance of hearing shall be posted immediately following the meeting at which the order or declaration of continuance was adopted or made. [Added by Stats. 1965 ch 469 § 1.]

Section 54956. Special meetings: Calling: Notice

A special meeting may be called at any time by the presiding officer of the legislative body of a local agency, or by a majority of the members of the legislative body, by delivering personally or by mail written notice to each member of the legislative body and to each local newspaper of general circulation, radio or television station requesting notice in writing. Such notice must be delivered personally or by mail at least 24 hours before the time of such meeting as specified in the notice. The call and notice shall specify the time and place of the special meeting and the business to be transacted. No other business shall be considered at such meetings by the legislative body. Such written notice may be dispensed with as to any member who at or prior to the time

the meeting convenes files with the clerk or secretary of the legislative body a written waiver of notice. Such waiver may be given by telegram. Such written notice may also be dispensed with as to any member who is actually present at the meeting at the time it convenes.

Section 54957. Executive sessions: Purpose

Nothing contained in this chapter shall be construed to prevent the legislative body of a local agency from holding executive sessions during a regular or special meeting to consider the appointment, employment or dismissal of a public officer or employee or to hear complaints or charges brought against such officer or employee by another public officer, person or employee unless such officer or employee requests a public hearing. The legislative body also may exclude from any such public or private meeting, during the esamination of a witness, any or all other witnesses in the matter being investigated by the legislative body.

Nothing in this chapter shall be construed to prevent any board, commission, committee, or other body organized and operated by any private organization as defined in Section 54952 from holding executive sessions to consider (a) matters affecting the national security, or (b) the appointment, employment or dismissal of an officer or employee or to hear complaints or charges brought against such officer or employee by another officer, person, or employee unless such officer or employee requests a public hearing. Said body also may exclude from any such public or private meeting, during the examination of a witness, any or all other witnesses in the matter being investigated by the legislative body.

Section 54957.6. Executive sessions: Holding in connection with consultations and discussions with employee organizations representatives

Notwithstanding any other provision of law, a legislative body of a local agency may hold executive sessions with its designated representatives prior to and during consultations and discussions with representatives of employee organizations regarding the salaries, salary schedules, or compensation paid in the form of fringe benefits of employees in order to review its position and instruct its designated representatives. [Added by Stats. 1968 ch 1272 § 2.]

Section 54958. Application of chapter

The provisions of this chapter shall apply to the legislative body of every local agency notwithstanding the conflicting provisions of any other state law.

Section 54959. Participation in deliberations in violation of this chapter a misdemeanor

Each member of a legislative body who attends a meeting of such legislative body where action is taken in violation of any provision of this chapter, with knowledge of the fact that the meeting is in violation thereof, is guilty of a misdemeanor.

Section 54960. Action against violation or threatened violations of this chapter

Any interested person may commence an action either by mandamus or injunction for the purpose of stopping or preventing violations or threatened violations of this chapter by members of the legislative body of a local agency.

HB 2157
SB 15 file
19 Feb 1973



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GUNTHER F. KRAUSE 1895-1967
ALFRED G. VRAZIE, OF COUNSEL

CABLE ADDRESS: "CARRIAGE"
TELEPHONE (503) 226-1191

February 20, 1973

Chairman
Professional Responsibility Committee
State Capitol
Salem, Oregon

Re: House Bill 2157

Dear Chairman:

I have been advised that the Public Disclosure Bill proposed by the Attorney General has been referred to your Committee. I co-chair the Legislation and Procedures Subcommittee of the American Bar Association Committee on Access to Government Information. I am therefore interested in commenting on House Bill 2157. I would appreciate notification from your staff if and when any hearings are scheduled on this Bill.

I would also appreciate it if you could arrange to provide me two copies of the Bill.

Very truly yours,

Daniel H. Skerritt

Daniel H. Skerritt

DHS:rk

HB2157
SR 15
26 Feb 1973
OREGON STATE ARCHIVES

8

63 LA 31 Com

# WITNESS REGISTRATION

S. B 15 _____ Committee on _____

Date: H.B - 2157 Time: _____ Room: _____

Public Hearing on _____ (Measure No.)

Please register if you wish to testify on the above-named measure.

| Name and address | Representing | For | Against |
|---|---|---|---|
| 5 Sharon Haberning 015-24 | Common Cause S.W. Mary Fanning Drive, Portland 97221 | | |
| 5 Blanche Schroeder | Common Cause | | |
| 5 Dolores Hurtado | Common Cause | | |
| (7) Myer Avedovech | City Attorney Milwaukie | | |
| ~~Daniel S Block~~ | ~~Board of Barber Examiners~~ | | ~~✓~~ |
| (6) PD FLEISSNER 378-3671 | Oregon Assn. of Hospitals | X | |
| Fred D. Gustafson | State Water Resources Board | | X |
| Phil Heletwork 378-2334 | Parole Bd | | |
| Walt Apley 378-4140 | Asst. AG. Dept. of Rev. | | |
| TOM ENRIGHT | Oregon State Employees Assn. | | X |
| RUSS ABOLT ✓ | CITY OF SALEM | | |
| (3) CORNELIUS BATESON ✓ | STATE HEALTH DIV | X w/amendments | |
| ANDREW JORDAN ✓ | CITY ATTORNEY WOODBURN | X + amendments | |
| | | | |
| | | | |
| | | | |
| | | | |

Proposed Amendments to House B[illegible] proposed by the Health Division

February 26, 1973

APPENDIX A
2/26/73

On page 2 of the printed bill, Line 6, delete "432.120,".

On page 2 of the printed bill, Line 7, delete "432.130,".

On page 8 of the printed bill, Line 6, after "432.060,", insert "432.120,".

On page 9 of the printed bill, Line 6, delete the word "public", and insert in lieu thereof, "governing".

On page 17 of the printed bill, Line 7, restore the bracketed material.

On page 22 of the printed bill, Line 28, delete "432.120, 432.130,".

432.120. (1) All certificates in the custody of any registrar are confidential and shall not be opened to or for public inspection except as provided in this section and ORS 432.420.

(2) Birth records shall be open to inspection by the registrant, if of legal age, his parents or legal guardian, or by their respective representatives.

(3) Stillbirth and death records shall be open to inspection by persons who have a direct and proper interest in the record, including examiners of title to property.

(4) Marriage and divorce records shall be open to public inspection.

(5) Full certified copies shall be issued to any person having the right to inspect the record, or upon order of a court of competent jurisdiction.

432.130. Any person who is refused an inspection of any record provided for in this chapter may file with the clerk of the circuit court for the county in which such record is kept a verified petition setting forth in plain and concise language the facts showing such petitioner's right to an inspection of the record. A filing fee of $1 shall be paid to the clerk of the court at the time of filing such petition. Forms of petition prepared by the board shall be furnished the petitioner without charge by the clerk of the court upon request. Upon hearing of such petition, the court, if satisfied that the petitioner has a direct and proper interest in the record, shall make an order authorizing and directing the inspection of the record specified in the petition.

REPEALED BY HB 1161
1971 LEGISLATIVE SESSION

432.110. County and local registrars shall prepare at least once each week, a list of the births, excepting those relating to certificates filed directly with the State Registrar, and deaths reported to them during the preceding week. This list shall show the full names of parents and child, the names of persons deceased, and the date and place of each birth or death. These lists shall be made available for public inspection for one week following preparation.

PORTION OF HB 2336 RELATING TO BIRTH CERTIFICATES FOR PRESENTATION TO THE JOINT COMMITTEE ON PROFESSIONAL RESPONSIBILITY DATED FEBRUARY 26, 1973

Section 10. Section 11 of this Act is added to and made a part of ORS chapter 432.

Section 11. Abstracts of birth and death certificates as provided in ORS 432.105 are public records and open to public inspection except as provided in this section. The county registrar shall mark the abstract of birth in a manner designated by the state registrar to indicate that the record is not to be used by any person compiling a list for publication or a business contact list under the following conditions:

(1) If a birth certificate indicates that a mental, physical or social problem may exist, including, but not limited to:

(a) The fetus was dead at time of delivery.

(b) The father of the child is not identified or the surname of the father is at variance with that of the child.

(c) The infant dies after birth.

(d) Congenital malformation is reported.

(e) Maternal disability or death is indicated.

(2) If the parent of the infant requests that the record not be made available for publication or business contact lists.

Section 34. ORS 432.020 is amended to read:

432.020. [(1)] The [board] <u>administrator of the Health Division</u> shall appoint

a State Registrar of Vital Statistics who shall qualify in accordance with standards of education and experience as the [board] administrator shall determine.

[(2) In case of a vacancy in the office of State Registrar, the board shall appoint a successor.]

[(3) The State Registrar shall receive the compensation fixed by the board.]

Section 35. ORS 432.105 is amended to read:

432.105. Each local registrar shall promptly transmit each birth certificate and each death certificate filed with him to the county registrar. The county registrar forthwith shall prepare an abstract of each death certificate [, containing the full name of the decedent, the place and date of death and the name of his spouse, if any.] and each birth certificate. The abstract of death shall contain as a minimum the full name of the decedent, the place and date of death and the name of his spouse, if any. The abstract of birth shall contain, as a minimum, the full names of the child and parents, sex of the child, the place and date of birth and the residence address of the parents. Such abstract, if the county registrar has his office in the county seat, shall be filed and indexed in alphabetical order and safely kept by the county registrar. If such records are not maintained in the designated county health office, the registrar shall promptly file each such abstract with the county clerk, who shall file and index the same in alphabetical order and safely keep the same of record in his office.

1973 Joint Special Conference Committee
on Professional Responsibility
Open Meetings Subject File.

Exhibit page 14 (a Photostat copy of an Oregon birth record) was removed because included information was found to be restricted access. 9/1/2011 AWS

APPENDIX B
2/26/73

comr
oregon state office 10 n. e. ainsworth street
portland, oregon 97211 [503] 285-2405

STATEMENT TO THE JOINT COMMITTEE ON PROFESSIONAL RESPONSIBILITY

by

Dolores Hurtado and Blanche Schroeder, Co-Chairmen, Oregon Common Cause PAC (Policy Advisory Committee), and Charles Habernigg, attorney - February 26, 1973

My name is Dolores Hurtado. I am co-chairman of the Oregon Common Cause PAC (Policy Advisory Committee). Oregon Common Cause, with 2800 members in Oregon, is a citizens lobby which is working to achieve maximum openness and accountability in government at all levels. Openness and accountability are prerequisites for citizen confidence in democratic political institutions.

Oregon Common Cause is concerned that public confidence in government is at a low point in this country. There tends to be widespread doubt that government decisions are consistently made for the public good. Building confidence in government is a delicate task. We believe that it should be a major responsibility of those in government at this time. Your Committee will be hearing three bills which have been developed by Oregon Common Cause members to help restore public confidence in government: bills concerning conflict of interest, public disclosure of lobbying activities, and requirement of open meetings of public bodies.

There is no more important step in rebuilding public trust than passage of an adequate open meetings bill. Action on such a bill, affirming the public's right to be present when public business is discussed and public decisions are made, should be a top priority of this committee.

The Oregon Legislature has by tradition conducted most of its sessions in the open. We believe this sets a fine example, and that the tradition should be firmly established into law, including provision for individual recording of all votes, both in committee and on the floor. In addition, we believe that it is imperative that the requirements for open meetings be extended to all public bodies, state, county, and local. There are wide variations in practice of public bodies throughout the state. Executive sessions, pre-meeting meetings, coffee-break sessions tend to break down public access to the decision-making process and to undermine public confidence in decisions which are made.

The time is ripe for an open meetings bill in Oregon. Eight states now have adequate open meetings laws in effect. Last month the Texas House passed a comprehensive measure on this subject. The U.S. Congress has before it a bill

common cause
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introduced by Sen. Hubert Humphrey (Dem.) of Minnesota and Sen. Roth (Rep.) of Delaware to open Congressional committee meetings. Sen. Lawton Chiles of Florida has introduced a bill which would open up both Congressional and other federal body meetings to the public, based on the enthusiastic public and press reaction to the Florida "Sunshine Law". The direction of public opinion is clearly toward opening up the process. A recent Salem Capital-Journal editorial (2/19/73) states: "What most people, including some legislators, don't realize is that Oregon is a bit tardy, to say the least" (with an open meetings law).

We are here tonight to put in your hands and describe the Oregon Common Cause bill on open meetings which will be introduced this week. This bill contains what we believe to be the essential ingredients of a good open meetings law. Such a law would require open meetings of all public bodies and their committees after adequate and timely public notice, individually recorded votes on all issues, prompt transcription of and public access to minutes of proceedings, and appropriate sanctions when these requirements are not met.

We urge this committee to act to pass out a meaningful open meetings bill. Such a bill will go far to give the public a sense of greater participation and stronger confidence in their government.

At this time Mrs. Blanche Schroeder, co-chairman of Oregon Common Cause PAC, will comment briefly on the two other bills which you are currently considering, after which Charles Habernigg, attorney, will outline the major provisions of the Oregon Common Cause bill. In the interests of time we will limit our discussion tonight to these points. We would like your permission to return at a later time to bring specific examples of the need for this legislation in Oregon and to discuss how similar laws function in other states. Thank you.

Corvallis Gazette-Times

ROBERT C. INGALLS, Editor and Publisher

ALLEN PETERS, General Manager
WANDA McALISTER, Editorial Page Editor
ROBERT J. FINK, News Editor
MICHAEL BRADLEY, Managing Editor

Gazette-Times, Corvallis, Oregon, Wednesday, January 17, 1973

# Secret sessions abuse public

All that beautiful talk about conducting the public's business in public and credibility and citizen participation sure went down the drain in a hurry. Only two weeks in office and the Corvallis City Council's seven newcomers already have hatched a secret meeting.

So their intentions were pure, as they all profess? So what? And they've compounded the iniquity with attempts to cloak the meeting as a purely "social gathering" and a dozen different stories of how and why.

By excluding the two re-elected councilmen and the mayor, the seven heaped a double load of hot coals on themselves. It was not only a resounding slap but the veterans would at least have warned against a secret session, perceiving fully the suspicions that immediately attach to any clandestine closeting of a quorum (or fewer) of a public body.

There is no question but that they gathered to discuss city matters. The fact they took no votes and made no policy decision changes that not one whit. The city charter requires "all deliberations" of the council to be open to the public. Webster defines deliberation as "a weighing and examining of reasons for and against a choice or measure." They deliberated.

A case is being contrived that the press was invited. Hogwash. An "independent" tv producer was there only during the time cable tv was discussed (socially, of course) and while he presented his case for live coverage of council meetings — to better inform the people about the council at work. Better he filmed the secret meeting.

It is apparent that part of the motivation was an understandable desire to polish their public images. Some resent having to ask frequent questions of administrative staff during council meetings. Some fear appearing "dumb" before their constituents. The public, however, is much more forgiving of flubs from new councilmen than they are of behind-the-back "learning" sessions.

They wanted council meetings to move more smoothly, to expedite matters faster and better — for the benefit of the public. That's the cant ladled out for generations to cover private gatherings of elected officials to discuss public business.

Most offensive and dangerous, at least two council members believe they did nothing out of line and indicate more such "helpful" private meetings. No way. They goofed; they got caught.

They abused the public's trust after conspicuous election campaigns by most to build council credibility through broad and open discussion of city concerns. Now they should work to repair the damage and begin pulling together as a team toward their mutual goals of city betterment.

Capital Journal

ESTABLISHED IN 1888

Mrs. Bernard Mainwaring, President

William L. Mainwaring, Editor & Publisher James G. Welch, Managing Editor

# Keep the meetings open

Atty. Gen. Lee Johnson and a group of newspaper and broadcast people drew up an open meeting law which now is before the Oregon Legislature to die or not to die.

It requires that governments at all levels keep their doors open. There are only a few exempt situations.

Presumably even the governor's morning staff meeting could be witnessed by anybody, or covered by the press most of the time.

Washington and California both have open meeting laws which have caused some amount of trouble (are two officials riding somewhere together and talking business conducting a meeting?). Johnson's bill tries to avoid most of the inadvertent nonsense of the laws north and south.

What most people, including some legislators, don't realize is that Oregon is a bit tardy, to say the least.

Florida and many other states have had such laws for many years. And the federal government now has applied such laws even to citizens' advisory boards.

We're a member of a federal advisory board and just received a memo from Washington, D.C., telling us in great detail about how we have to post meeting notices, admit the press, and hear oral statements from the public. We also have to publish all meeting notices in the Federal Register, a sort of official schedule of events published regularly in the capital.

This is for an all-layman committee, dealing only with local applications of federal policies, and having no power whatsoever to do anything except talk and suggest.

It's interesting that there are only four subjects which can be discussed in private:

> "1. National security.
>
> "2. Matters which would disclose trade secrets, or confer undue competitive advantage.
>
> "3. Information that if prematurely released would be detrimental to the public health or safety.
>
> "4. Information concerning the competence or character of an individual, or which would constitute an invasion of his privacy or destroy his livelihood."

But you don't close a meeting for the above reasons by whim. You have to apply 30 days in advance in writing to the appropriate cabinet officer for a determination if closure is warranted.

The whole effect obviously is that you never close a meeting, no way.

Compared with the federal law, Oregon's proposed statute is mild.

We favor both state and federal approaches. Few subjects in this world benefit from secrecy. Most secret meetings are little more than gossip sessions at best, or evil plotting at worst. Public business that the public can't hear about is pretty hard to justify.

APPENDIX C



TESTIMONIAL AGAINST SENATE B 2/26/73

Copies for each member of the committee

My name is John B. Olin, I am Superintendent of Banks for the State of Oregon. I wish to speak to the problems that we will encounter with the enactment of Senate Bill 15 and House Bill 2157 as they are now written.

ORS 706.245 establishes the State Banking Board within the Department of Commerce. Its members, three in number, are appointed by the Director of Commerce with the approval of the Governor. They serve a term of four years.

706.265 establishes the powers and duties of the Banking Board which are:

1. The Board is authorized to inquire into the needs of the Banking Institutions of Oregon;
2. The functions of the Banking Division and the matter of the business policy thereof;
3. To confer with and advise the Director of Commerce as to how the division may best serve the state and the Banking Institutions;
4. To make recommendations and suggestions of policy to the Banking Division, as the Board shall deem beneficial and proper for the welfare and progress of the Banking Institutions and of the public and of the Banking Business in Oregon;
5. The State Banking Board shall perform such Administrative hearing and review functions as are vested in it under the Provisions of the Bank act (Administrative Procedures Act).

706.720 states that the Superintendent shall receive and place on file in his office all reports required by the bank act. None of such reports except the published statement shall be deemed public record or be open for public inspection. Only the Federal Reserve Bank and its examiners, the Comptroller of the Currency and the national bank examiners, and the Federal Deposit Insurance Corporation may examine copies of all reports pertaining to the condition of state banks. These reports include such confidential data as confidential directives by the Superintendent or his examiners to the Board of Directors of the bank regarding their condition and corrective measures that they must take and analysis and summary of their financial figures, a recap of the examiners classification of assets into substandard, doubtful or loss categories; the resultant infringement against capital; the detail of indebtedness of officers, employees, and their interests, also detail of their salaries and other renumerations, the total

delinquent category of all loans and the detail by name and narrative and amount of all classified loans, the names of customers who have overdrawn their accounts and how much, detail regarding real estate acquisition, large account saturation, several pages of extremely confidential data in the form of questionairs relating to the management of the bank, carrying of securities, investments, loans claims and judgements, analysis of qualifications of management of the supervision exercised by Boards of Directors and also their qualifications, etc.

706.730 requires that the Superintendent and anyone connected with the Banking Division should not disclose the name of a depositor or debtor of the bank to anyone except in the performance of his official duty. There are criminal penalties attached to the violation of this statute.

706.460 is that section relating to the promulgation and adoption of reasonable and uniform rules and regulations to govern the conduct and operation and management of banks or trust companies. Such rules and regulations have to be adopted under the Administrative Procedures Act which is conducted openly in a public way with the proper public notice, with invitations to the public or any interested parties to make comments, objections, etc.

The Board meets regularly, usually quarterly and discusses many subjects including the following which are typical:

1. Prospective Superintendents of Banks and their qualifications together with confidential data surrounding their backgrounds;
2. Establishment of examination fees;
3. Salaries of the Banking Department;
4. Budgets;
5. Interpretations of laws relating to Banks, such as those relating to loan limits, oaths of office of officers, usury laws, loans to officers controlling various companies.
6. The matter of policy the Department should take relating to debenture issues of banks.
7. Reserve changes and their effect on the banking industry; incidentally, if a reserve change is announced it is done through administrative procedures with a public announcement;
8. Reserve problems that have existed between banks, such as triangulation of reserves and the corrective measures that the Superintendent has to take to correct them;
9. Banks with high exposure on classified loans:
   a. The recommended course of action in the way of cease and desist orders regarding loan policy, or the possible sale of the bank if the bank should be somehow insolvent;
   b. Contemplated corrective actions being taken by the Federal Deposit Insurance Corporation;

c. Removal of officers and directors;
d. Possible sale of the bank or its deposits, liability to a solvent bank to protect the depositors.

10. The problem of brokered deposits;
11. The necessity of internal bank audits and which institutions are not following this practice and the posture that the Banking department must thereby take.
12. Accounting procedures particularly that relating to accrual accounting--which banks have not yet conformed.
13. Legislation;
14. Mergers, particularly those that are to correct existence of an errant bank and the necessity therefor of complete secrecy to accomplish the merger before a run on the bank might be implemented;
15. Abuses of second mortgage financing, and in this case we get right down to the names of the loans involved and the problems that have been created.
16. Training programs for examiners;
17. Banking Code problems, suggested recomendations to Law Revision Committee, details and progress that is being made;
18. Branching problems or infringements or violations;
19. Common problem loans either by name or type and the appropriate cures that the Banking Board would recommend in the way of policy edicts from the Division.

With the matters which the Banking Board is faced it could not function under an open meeting concept. To do so would constitute an unreasonable invasion of personal privacy.

With these constraints in mind, I would recommend suitable words of amendment to section 2 paragraph 2,3 and 4 of Senate Bill 15 to exclude the Banking Board from the definition of "legislative body" meeting" of "public agency".

Similarly House Bill 2157 if adopted should exclude the Banking Board from the language in section 12 relating to public attendance in Board Meetings.

On the matter of public records, nearly all of our records are confidential as they primarily apply to the examination of those we supervise.

The obvious exception however, relates to the documentation of charterings of banks, trust companies, credit unions and industrial loan companies, and the certification of branches or licensing of small loan companies, pawn brokers or those selling checks. This information is made available to all who inquire.

However, the language in section 11 of House Bill 2157, paragraph 1(d)on page 6 of the bill, leaves some doubt as to the preservation of confidential material, particularly

bank examinations or examinations of other financial institutions. Paragraph (j) should include the words "or otherwise prohibited by state law" to embrace the intent of 706.720 and 706.730.

Similarly, paragraph (m) should include 706.720 and 706.730, 709 (trust), 711 (mergers), 713 (foreign banks), 714 (branch banks), 716 (mutual savings banks), and examination reports relating to ORS 723 (credit unions), 724 (industrial loans), 725 (consumer finance companies), and 726 (pawn shops).

I, therefore, submit, because of the confidential nature of our business that the public revelation of these particulars would not be in the best interest of the public and would be disastrous to the administration of our law and would seriously breach the confidential nature of our reports, findings, and deliberations.

I hope that my remarks will result in correcting these two deficient areas in these bills.

# Comparison of SB 15 and HB 2157

## "PUBLIC MEETINGS"

1. SB 15= Provides for " a legislative body of a public agency."
   HB 2157= Provides for " every governing body having advisory, legislative, or rulemaking function."

2. SB 15= Provides that a member of the public need not fulfill any condition precedent to his attendance in order to attend a public meeting( i.e., registration of name or other information or the completion of a questionnaire).
   HB 2157= No provision for this.

3. HB 2157= Provides that when any staff or members of a governing body have any provate communication which forms the basis for a decision, this communication must be disclosed at public meetings.

   SB 15= No provision.

4. SB 15= 2 provisions for holding a private meeting.
   HB 2157= Same 2 provisions, but adds two more
   (a) Labor negotiations and matters related directly thereto.
   (b) Preliminary negotiations involving matters of trade or commerce in which the gov't body is in competition with other public bodies of other states or nations.

5. Both bills provide that witnesses for public and private meetings may be removed during the examination of other witnesses on the subject.
   HB 2157= Adds the provision that anyone may be removed if it is necessary to do so in order to maintain order.

6. SB 15= Provides that this Act shall supersede all conflicting provisions in state law, but shall not apply to the extent that it is inconsistent with federal law.
   HB 2157= No such provision.

7. HB 2157= Specifically provides that it (the bill itself) does not affect deliberations of grand juries.
   SB 15= No mention of this.

8. SB 15= Gives specific notice of how, when, and where the public is to be notified of the adjournment of a meeting and the convening time of the next meeting.
   It also provides for what is to be done about meetings in the case of an emergency.
   HB 2157= Makes one provision for emergency. "In case of any emergency meeting or meeting held on necessarily short notice, such notice shall be appropriate to the circumstances."

As far as regular meetings are concerned, it says, "Every public body shall give notice to the public, reasonably designed to give actual notice to all interested persons--"

9. SB 15= Provides specifically for notice of special meetings.
HB 2157= No provision.

10. HB 2157= Provides for notification of closed meetings.
SB 15= No provision.

11. SB 15= HB 2157= Both bills provide that a member of the public may bring suit against the public agency in case of violation of this act.

12. SB 15= Provides penalties for each member of a legislative body who violates this Act.
HB 2157= No provision.

THE DAILY ASTORIAN
ASTORIA, OREGON

Cover

From
Mike Forrester

Feb. 20

Dear Sen. Ripper:

I'm enclosing a copy of an editorial I wrote recently on the open-meeting bill.

As I note, I am apprehensive about such legislation, because I'm not sure it would make things better than they are now where the public's right to know is concerned.

As I say in the editorial, I think that coverage of most meetings, including those dealing with quite sensitive matters, can be worked out where there is a good relationship between paper and public body.

Any open-meeting law would have to have exceptions. I oppose strongly the labor negotiations exception, believing teacher pay talks can be covered successfully and diplomatically and that they should be so covered. Officials would certainly rely on those exceptions, perhaps unduly.

And such a bill could always be amended, which is an unhappy prospect.

I haven't been back to the Bay Area for a few years, but am due to see my uncle John in Coos Bay soon.

Thanks.

Mike Forrester

THE DAILY ASTORIAN

MICHAEL A. FORRESTER, Publisher, Editor

DONALD J. BUDDE, General Manager

KENNETH BUE, Mechanical Superintendent

Editorials Analysis Opinion

PAGE 8 ASTORIA, OREGON, THURSDAY, FEBRUARY 15, 1973

# Watch Out for Open-Meeting Law

This newspaper is a bit leery of legislation in Salem that would require all meetings of public bodies to be open, except those dealing with personnel matters, labor negotiations and trade matters.

Certainly city councils, county commissions, legislatures and the other public bodies should deal openly. That includes having nearly all their meetings open.

However, it's questionable whether a public-meeting law helps the situation more than it hurts it. And the proposed measure provides no penalties for those public officials who might be found guilty of holding closed meetings when they weren't supposed to. It does say a person could go to a circuit court and get an injunction preventing a body from having more closed meetings.

The openness of meetings now in this state varies much from city to city, port to port and county to county.

a broad phrase), labor negotiations and trade matters that might be discussed by a port commission.

Two things can develop from drafting such a law: officials can hide behind it, and it can be amended in future sessions to the point where matters are worse for the public than before the law was passed.

Board members who might be open now to letting the press cover personnel session might not be open after a law was passed, and might interpret "personnel" to mean just about anything related to public employes.

This newspaper has been told that an open-meeting law in one of the states has drawn amendments (some passed, some not) in just about every session after it was passed. That's a bit scary, because many public officials would be eager to add more exceptions to any open-meeting law.

Some councils and commissions meet often behind closed doors, and cover all sorts of things, including those which have no reason being kept from the public. Other officials have closed sessions only on sensitive personnel matters (deciding whether to fire a department head, for example) or when they're discussing a court action. A few commissions and boards deal quite openly and let the press sit in even on personnel sessions.

The amount of openness of these public bodies depends on the officials involved and on what the press does, if anything, to move the public body toward openness. In Clatsop County, the situation varies greatly from place to place. The Port of Astoria Commission, on one hand, has had a history of many closed, unannounced meetings. The Astoria City Council, on the other, has been straightforward about its sessions.

This newspaper and many others believe the best situation is when a council or board has all its meetings open to the public, except perhaps those on sensitive personnel matters, property acquisition and court matters, and allows the press to sit in on even those personnel, property and court sessions. The value in a reporter sitting in on the latter without writing about them is that the public is protected from the possibility that a public body would cover other nonsensitive matters or that it would act irresponsibly, and the public body is protected from accusations that it was up to no good without the press observing.

Press observation of even the most sensitive personnel matters can be of benefit because if the matter becomes public or generates rumors, the newspaper can spike such rumors because of the background it has. The key to the whole thing is trust between the public officials and the reporter. They must have confidence that he won't be irresponsible before they'll allow him to sit in on sensitive personnel discussions.

How might an open-meeting law hurt this situation?

By making formal—through law—those cases where a public body could have a closed meeting: personnel matters (that's

The Daily Astorian disapproves of labor negotiations being closed, if that means the press would be excluded from sessions on the pay of teachers (the largest single item in the school budget) and other public employes.

Finally, the fact that no penalties are provided for violations provides little or no incentive for secrecy-prone officials to comply with an open-meeting law.

If a bill passes in Salem, this paper would like to see labor negotiations struck from the legislation and the section on personnel written so explicitly and tightly that it applies just to truly sensitive matters. And we'd like to see it embedded in the Constitution so it couldn't be amended in 1975, 1977 and so on.

If a poor bill is passed, the public will be the loser.

Herald and News

Klamath Falls, Oregon
Established 1906

# Viewpoint



*An Editorial*

## Council's Secret Session Affront To KF Citizens

The Klamath Falls City Council was irresponsible in holding a secret "study session" Jan. 22 when it discussed at length seven proposed plans for the implementation of Downtown Parking District No. 1.

The cloak-and-dagger method of arranging the meeting is totally ludicrous in our system of representative government. And it is totally unacceptable.

We can appreciate the concern of the mayor and councilmen in attempting to come to terms with a problem that is, at best, complex. But the method they chose was an insult to the citizens who elected them and who pay the city's bills. They could have held a publicly announced executive session to discuss it. At least the public would have been aware that a meeting was held. And the people of Klamath Falls would not have to wonder why their elected officials must sneak around — not even informing an absent council member of the meeting — and being careful not to mention their actions openly.

We are now faced with the possibility that a parking district could be implemented without further public hearing. Also, we do not know why this particular plan is the most acceptable to the council because we do not know what the other seven plans were that the council rejected.

The actions of the mayor and council — and their taking along staff people — raises many serious questions that need not have been. The council has met once in secret — how many other times? The council talked about the parking district — what other topics may have been discussed? Why does the council feel it cannot trust the penetrating eye of public inspection?

These are questions which would not have been raised if the council had recognized its responsibility to be open with the people of Klamath Falls.

We do not doubt for a moment that the men who sit in the seats of mayor and council are honest men serving with the best interest of the community in mind. But their secrecy in conducting themselves in public matters can destroy their effectiveness.

We hope the councilmen have been embarrassed by the incident. They should be.

We also hope something constructive came of it; that the council learned to transact the public's business in public — not just to be more careful the next time they want to hold a secret meeting.

# Other Editors Discuss . . .

## *Secrecy—Who Needs It?*

Secrecy in local government is entirely unnecessary. The open way in which the Ashland City Council has been conducting itself proves it.

Following a survey of Oregon, the Associated Press reported the other day that the practice of holding secret meetings is widespread among public bodies in the state.

The survey indicated that some of Oregon's public business is done in secrecy at coffee get-togethers, informal pre-meeting discussions, study sessions or in the disguise of otherwise legitimate executive sessions.

Such secrecy is the target of a bill that has been introduced in the legislature at the request of Attorney General Lee Johnson. The legislation would require public bodies to make decisions on the basis of open discussions at public meetings.

Unless they have something to hide, members of public bodies around Oregon that now practice some degree of secrecy have nothing to fear from the proposal. It would lead to a more open form of government, one in which citizens could have greater trust in their governing bodies based on the knowledge that nobody is trying to do anything behind their backs.

Ashland's open system of city government has worked well.

Members of the local governing bodies, including the city council, the planning commission and the park commission, apparently realize that it is proper to conduct the public's business without restrictions on who can listen and watch.

These groups do hold occasional informal study sessions, but they make no attempt to keep anyone out. Council study sessions are just as open as are the council's regular and special meetings.

Reporters have no trouble finding when meetings are scheduled. They need only to ask.

It wasn't always so. But it seems local officials have found they have nothing to fear from being open with the people.

Perhaps it's a result of this openness that city affairs lately have been going pretty smoothly.

— The Daily Tidings, Ashland, Feb. 14.

# Council Meets In Secret On Parking Area

By MARK WILBUR
H&N Staff Writer

A secret meeting of the Klamath Falls City Council Jan. 22 brought the Downtown Parking District No. 1 one step closer to implementation, the Herald and News learned this week.

Further action is pending a legal interpretation of a proposed plan by City Attorney Bill Brandsness to determine whether its implementation requires a public hearing. The plan involves purchase of downtown property at an approximate cost of $500,000; the exact figure has not been made public.

The secret meeting took place the evening of Jan. 22 in the conference room of the Pacific Power & Light Co. building, 500 Main St.

In near-melodramatic fashion staff cars were left at home as members of the council and professional staff shared rides to the meeting which has been described by its participants as nothing more than a study session. No mention of the meeting has been made during open meetings of the council before or since Jan. 22.

In addition to Mayor Robert Veatch and the city councilmen, City Manager John Halvorsen, City Planner James Nuzum, Public Works Director Roger Tutty and City Attorney Brandsness were in attendance. Councilman George May was not present.

May told the Herald and News Tuesday that he had not been informed of the meeting and was not aware that such a session had taken place. He was in Portland during the time the meeting was held.

### Seven Proposals

The meeting — an unofficial gathering of the city officials — took place in confidence among its participants with the sole purpose of discussing seven proposals concerning the parking district.

"If I'd known about it, it would have been open," Councilman May stated. "There are two things that I value highly — honesty and integrity. I would never do anything to jeopardize them."

"Yes, we kicked it around every which way and (studied) every angle," Councilman Ted Hansen said Tuesday concerning the discussion of the parking district Jan. 22.

Hansen said the council felt the meeting was necessary for the councilmen to get their "heads cleared up" concerning the parking district proposals.

Asked if he believed a public meeting should be held before a parking plan is implemented, Hansen replied, "That's debatable. Everybody has a different idea," he said, explaining that public discussion would result in a great deal of rhetoric without necessarily solving the problem.

### Majority Want It

"From all indications the majority (of people in Downtown Parking District No. 1) want a parking district," Hansen said. "Now it's up to us to implement it."

He said it is the intent of the council to implement the parking district with the "least confusion to go through again." He referred to the litigation in which the city was involved following its last attempt to implement the parking district.

Hansen explained that the plan now under serious consideration — Alternate No. 8 — will be close to the plan which was upheld by an appeals court last March. But, he said, some modifications are incorporated into the plan with the city absorbing a larger share of the costs and making some changes in boundaries.

While the consensus of opinion is that Alternate No. 8 is the best proposal, Councilman Howard Pernell isn't quite convinced.

"I haven't put enough time into studying it," Pernell told the Herald and News.

(Continued On Page 7)

# Train Plows Into Texas

Herald and News

10 Cents — Wednesday, Feb. 7, 1973 KLAMATH FALLS, Ore. Telephone 884-8111 — No. 10,516

NORTH LINCOLN HOSPITAL

3043 NORTH PARK DRIVE • P.O. BOX 767 • LINCOLN CITY, OREGON 97367
PHONE 503/994-3661

HOUSE BILL 2157 AND SENATE BILL 15 ON OPEN MEETINGS OF GOVERNMENTAL BODIES

Present law requires open monthly meetings of the Governing Bodies of District Hospitals at which all public business must be transacted. This is necessary and proper.

The proposed legislation, however, requires open meetings for all committees of the Board and other contacts between directors with each other and with senior staff members. This would seriously handicap the Board in its operating responsibilities and damage the public interest in a well conducted medical institution.

The following principles and specific examples are submitted to support the proposition that District Hospitals should be excluded from the "Open Meeting" bills.

I. The Governing Board of a hospital is not a "legislative body". It is directing a medical institution for treatment of sick and injured persons under the care of physicians, in conformity with State, Federal and professional regulations.

II. In the direction of hospital affairs, premature and distorted publicity may prevent constructive action and harm the public interest. It poses the additional danger that the District Hospital may become a local political football.

EXAMPLES:

A. Preliminary plans to encourage a private party to build a much needed nursing home on land adjacent to the hospital was discussed in a public meeting. The land was subsequently tied up by a competitor who has now declined to build. The public suffers.

B. Financial matters such as capital outlay need detailed exploration before a report is ready for Board consideration. Premature publicity leads to distortion and sometimes alarm. For instance, a plan to

build doctors' offices on hospital land in order to attract much needed physicians was opposed and made difficult by public discussion before the matter was thoroughly researched.

C. Certain areas of hospital practice are so sensitive that exploration in public is not possible until the facts are in and analyzed.

EXAMPLES:

1. Discussion of the appointment of a Medical Director to this hospital, essential to its survival, would have split the community into rival camps each with vocal public support; and produced local chaos. Until a suitable person had been found and the matter was ready for Board action, the split in the community would have wrecked the hospital.
2. The Board of Directors is legally responsible for the quality of patient care in the hospital. The Chief of Staff's report to the Executive Committee concerning hospital departments and personnel and the functioning of the hospital has to be privileged if it is to be of any value. So have the details of staffing problems and the needs of recruitment.
3. The report of the Medical Staff which includes Medical Audit, Utilization, Medical Privileges, etc., is needed by the Board's Executive Committee. It involves individual doctors, patients and their treatment, and is confidential.

III. The inclusion of the few District Hospitals in Oregon under the "Open Meeting" bills would discriminate between such institutions and the majority of hospitals in the state, since the business affairs of the private hospitals are conducted privately at all times.

IV. If a law is passed that is not found feasible, and not in the best public interest, it is not a good law, and invites evasion.

Lyle Hasselbrink

Lyle Hasselbrink, Chairman

APPENDIX A

3/5/73

March 5, 1973

Amended draft of S.B. 15

For Joint Special Committee on Professional Responsibility

Drafted by William Boland, Oregon Bar Association,
Grattan Kerans, Administrative Assistant

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MEASURE SUMMARY

Requires governing body of a public body to open meetings to the public except for designated matters. Requires governing body to set time and place for regular and special meetings, for giving notice thereof, including adjournments and continuances of meetings. Permits designated matters to be considered in closed meetings. Provides penalties.

 

A BILL FOR

AN ACT

Relating to public meetings; and providing penalties.

Be It Enacted by the People of the State of Oregon:

Section 1. The Legislative Assembly finds that the public bodies of this state exist to aid in the conduct of the people's business. It is the intent of this Act that the actions of such public bodies be taken openly and that their deliberations be conducted openly. The people of this state do not yield their sovereignty to the bodies that serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created.

Section 2. As used in this Act:

(1) "Decision" means any determination, decision, vote or final disposition upon a motion, proposal, resolution, order, ordinance or measure by a majority vote of a governing body at any meeting at which a quorum is present.

(2) "Executive session" means any meeting or part of a meeting of a governing body which is closed to certain persons for consideration of certain matters, and where no decision is made.

(3) "Governing body" means the duly appointed or elected qualified and acting officers of any public body authorized to make a decision for the public body.

(4) "Matter" means any subject, business, issue, proposal, concern, action, measure or any other thing to which consideration is given by a governing body.

(5) "Meeting" means the joint convening of a governing body for the purpose of making a decision or considering any matter before a governing body.

(6) "Public body" means any state, county, city, district or municipal or public corporation, and any board, department, commission, council, bureau, committee or subcommittee or advisory group or any other agency thereof.

(7) "Quorum" means a majority of a governing body unless otherwise provided by rule or law governing the public body.

Section 3. (1) All meetings of the governing body of a public body shall be open to the public and all persons shall be permitted to attend any meeting of the governing body of a public body except as otherwise provided by this Act.

(2) The governing body of a public body shall not require any person to register his name or furnish any other information as a condition of attendance at its meetings, except as may otherwise be required by law.

(3) A governing body of a public body shall not hold a meeting at any place where discrimination on the basis of race, creed, color, sex or national origin is practiced.

(4) The secretary or clerk of a governing body of a

public body shall maintain a list of persons who request notification of all meetings, or of meetings when certain specified matters will be discussed, and shall provide them reasonable advance notification of such meetings.

Section 4. The governing body of a public body shall provide, by ordinance, resolution, bylaws or by whatever rule is required for the conduct of business, the time for holding regular meetings. If by reason of fire, flood, earthquake or other emergency, it shall be necessary to meet in a place other than the regular place of business, the meetings may be held for the duration of the emergency at such place as is designated by the presiding officer of the governing body. Notwithstanding the provisions of section 7 of this Act, the governing body shall give such reasonable notice of its meetings as is possible under the circumstances.

Section 5. The governing body of a public body shall not adjourn a meeting without designating, prior to adjournment, a time and place for its reconvening. Such a reconvened meeting shall not be held until such notice, in the manner as provided in section 7 of this Act, is given.

Section 6. Any matter on the agenda of a meeting of the governing body of a public body may be continued or recontinued to any subsequent meeting. In this event, prior to the discontinuance of the hearing on the matter, the governing body shall notify those present of the time and place for the continuance of the hearing on the matter.

Section 7. A special meeting may be called at any time by the presiding officer of the governing body of a public body,

or by a majority of the members of the governing body, by delivering personally or by mail written notice to each member of the governing body and to each local newspaper of general circulation, radio or television station requesting notice in writing. Such notice must be delivered personally or by mail at least 24 hours before the time of such meeting. Any notice required as set forth in this section for a special meeting is sufficient notice for a regular meeting of the governing body. Any member entitled to notice may waive such notice by filing with the secretary or clerk of the governing body a waiver. Any member who is actually present and participates in such meeting waives notice of the meeting.

Section 8. (1) Nothing contained in this Act shall be construed to prevent the governing body of a public body from holding executive sessions during a regular or special meeting:

(a) To consider the appointment, (other than to fill a vacancy in elective office), employment or dismissal of a public officer or employe.

(b) To hear complaints or charges brought against such officer or employe by another public officer, person or employe, unless such officer or employe requests a public hearing.

(c) To negotiate labor agreements and matters directly related thereto.

(d) To consider the purchase of real property.

(e) To consider records, data or information that is exempt by law from public inspection.

(2) No executive session authorized by this section shall be held unless the governing body has first been convened in a

meeting for which notice has been given, as provided for in section 7 of this Act, and during which meeting the presiding officer has announced that an executive session will be held, and identified the section and subsection under this Act authorizing the holding of such executive session. Whenever any such executive session is held, no decision shall be made except in a meeting.

(3) The governing body may exclude from any meeting or executive session, during the examination of a witness, any or all other witnesses in a matter being considered by the governing body.

Section 9. To the extent that the provisions of this Act are inconsistent with federal law, they shall not apply.

Section 10. Any person may commence an action, suit or proceeding for mandamus, injunction or declaratory relief for the purpose of compliance with, or the prevention of violations or threatened violations of this Act, by members of the governing body of a public body, or to determine the applicability of this Act to matters or decisions or threatened decisions of the governing body.

Section 11. Each member of the governing body of a public body who attends a meeting or executive session of such governing body where matters are considered or decisions are made in violation of any provision of this Act, with knowledge of the fact that the meeting or executive session is in violation thereof, is guilty of a Class C misdemeanor.

Section 12. The provisions of this Act shall not apply to any judicial proceeding, hearing or trial.

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Section 12. The provisions of this Act shall not apply to any judicial proceeding, hearing or trial.

APPENDIX B
3/5/73

# COMMENTS ON SB 15

By John Painter Jr., Staff Writer, T

(I have covered city and county governments, school boards, courts, district attorneys, government agencies, OEO boards and other governmental and administrative bodies.)

Members of the news-gathering craft have long harbored the suspicion that most public bodies would prefer to conduct the public's business in private. In more than a decade of professional reporting I have encountered scant reason to modify this position.

In considering SB 15, it appears the members of this committee are considering two separate questions:

1. The right of the public to unfettered access to the decision-making processes of governmental bodies and their subordinate administrative agencies, and

2. The right of the news media, as representatives of the public, to access to the deliberative mechanisms of government.

As drafted, SB 15, with some exceptions, appears to satisfy the right of the citizen to be present when public bodies discuss or consider proposals affecting the public welfare.

It does not, however, speak to those types of meetings which often are of paramount interest to the press.

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As members of this legislature well know the decision-making process is a continuing thing, not necessarily confined to formal hearings or public meetings. Members of local governmental bodies often find it necessary to meet informally to discuss a variety of issues. These informal gatherings do not appear to fall under the provisions of SB 15 since no specific decisions are reached. But for members of the news media, such informal gatherings often provide valuable information on the attitude of governmental officials toward matters which may later require public action. They also tell reporters, but not necessarily the average citizen, a great deal about how public officials view the role of their government or agency. They additionally give reporters information about the priorities of government.

Recently, I discovered the Portland City Council in an unannounced meeting with its legislative lobbist, Don Barney, and other staff aides on what was described as "legislative strategy." Since the city already had publically announced its legislative program, it would have been valuable for a reporter to know whether events in Salem had prompted Barney to recommend the city modify or amend its legislative priorities. The Portland City Council has been meeting with increasing frequency on these types of matters. On many occasions these briefing meetings result in no hard decisions, but certainly do provide indications of the direction of government.

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Such informal briefing sessions do not appear to fall under the language of SB 15.

Under Section 7 of the proposed bill, there is a requirement of a 24-hour notice of special meetings. In at least one case in my experience, such a provision would have forced a public body to violate another state statute. In that instance, computer difficulities prevented the board from approving its fiscal budget until the 11th hour. A 24-hour notice before adoption of the budget would have put the body in violation of state budget law.

As a professional journalist, I am opposed to Section 8 in its entirity. In my experience attending executive sessions of the Beaverton School District I rarely found personnel matters worthy of printing. Only once, when some high school principals were shifted, did I print a story.

Elimination of Section 8(1)[b] from SB 15 poses sensitive problems for both the public agency and the news media. I suggest any media would be extremely wary of printing complaints presented in such a forum; professional ethics and the laws of libel demand special judiciousness. It is the policy of my newspaper to proceed with great caution in such matters as those affecting a person's reputation. Haste can hurt the public interest far more than caution when a reputation is on the line.

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Moreover, there are cases in which the person accused unjustly may fear to request a public hearing. It is my opinion elimination of Section 8 would do no substantial harm to either the individual or public interest. If events should prove otherwise, the law can be amended.

Section 8 also poses another, greater, threat to journalists. It codifies instances in which the news media can be excluded from public meetings. It provides a legal cloak behind which public bodies can discuss and resolve issues not included in the proposed legislation. Under the existing law, the news media can demand admission to executive sessions where it has reason to believe business in the public interest is being decided. Whatever is going on in the executive session, Section 8 provides a public body with the legal right to tell the press and the public to go to hell. In addition, Section 10 does not necessarily provide a satisfactory remedy to the barriers erected by Section 8. If one member of a city council leaked to the press the council was using the closed door guise of personnel appointments to ~~decided~~ decide crucial budget matters would that council member also be willing to testify to suc in a mandamus action? I doubt it.

There is no question governmental bodies hold secret meetings. Any reporter can supply plenty of examples, as in the City of Portland's recent selection of a new

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council member.

Although SB 15 does pry open the door to meetings from which the average citizen has been excluded in the past, I am not necessarily sure it extends--or can be extended--to those casual, informal meetings from which the press is so frequently banned.

After all, when Goldschmidt and Westerdahl meet in private at Mt. Hood to discuss airport expansion it certainly would be in the public interest for the press to attend. But such a meeting clearly is not covered by the provisions of SB 15.

311 SENATOR BLDG., PORTLAND 97204
TELEPHONE 227-3186 (AREA CODE 503)

aclu

APPENDIX C
3/5/73

Statement of the American Civil Liberties Union of Oregon
presented by Dr. Judah Bierman
before the
Joint Committee on Professional Responsibility
on March 5, 1973
Regarding SB 15, relating to Public Meetings

The American Civil Liberties Union of Oregon supports the purposes of Senate Bill 15 as set forth in Section 1. We agree fully that informed decisions are the very life blood of a democratic society and that the right of the people to be witness to the actions of all legislative bodies should not be restricted except under special circumstances. We respectfully suggest some minor amendments to clarify some of the procedures outlined in the Act.

I. We believe the purposes apparently intended in Sec. 8 could be reached more effectively if the section were stated as follows:

Sec. 8 1.) Nothing contained in this act shall be construed to prevent a legislative body of a public agency from holding executive sessions during a regular or special meeting, upon the vote in public session of two-thirds of its members present, to consider but not otherwise to act upon any of the following matters:

a) the appointment, employment or dismissal of a public officer or employee;
b) to hear complaints or charges brought against the good name but not merely the competence of a public officer or employee, unless such officer or employee requests a public hearing;
c) the consideration of a contract under negotiation where public disclosure would likely impair the agency's bargaining position;
d) discussion with legal counsel concerning matters which are or may be the subject of litigation in which the agency is or may be a party;
e) the selection of a site or the purchase of real estate, when publicity regarding such consideration might reasonably be expected to increase the price.

In any such executive session, the body may not expand its discussion to include matters other than those listed above.

2) The legislative body may exclude from any such public or private meeting, during the examination of a witness, any or all other witnesses in the matter being investigated by the body.

3) The only persons who may attend an executive session of a legislative body are the body itself, its staff, clerical assistants, its legal counsel, and persons whose expert information is needed by the agency as part of its consideration of the matter which required the holding of the executive session.

II. The ACLU believes that the purposes of this Act would be reinforced and strengthened by the inclusion of two sections on the keeping of minutes, perhaps a new Sec. 9 and Sec. 10.

Sec. 9 1) Minutes shall be taken of all meetings, both open and those held in executive session, of all legislative bodies. Neither a full transcript nor a recording of the meeting is required, but the minutes must cover all important topics and motions that arose at the meeting and give a true indication of the business of the meeting and the views of the participants. Minutes shall include at least the following minimal information:

a) All members of the legislative body present;
b) All motions, proposals, and resolutions raised and their disposition;
c) The results of all votes, including a roll call if such a vote is taken;
d) The substance of any arguments on any matters.

2) Minutes of all meetings shall be matters of public record and shall be available upon request within five days of the holding of any meeting, except as provided in Section 10.

Sec. 10 Full accurate and complete minutes must be kept of all meetings of legislative bodies held in executive session. Such minutes shall conform to the requirements for minutes as stated in Sec. 9. At a time when public disclosure of the proceedings of an executive session would no longer jeopardize the interests listed in Sec. 8, the minutes of such meetings must immediately be open to public inspection and made available upon request.

III. Current sections 9 and 10 would now become 11 and 12.

IV. The ACLU suggests that in addition to the personal penalty clause of Sec. 11 (to become Sec. 13) there be added the following:

Implementation of any action taken by a public legislative body at meetings which fail to comply with the procedural safeguards incorporated in this Act may be restrained by a state court of general jurisdiction upon suit by any qualified elector in the county in which the public legislative body is located.

In the absense of such restraining order, persons relying in good faith on implementation of the action shall be fully protected.

Comments

The expansion of Sec. 8 is intended to clarify the special conditions governing executive sessions. While the ACLU recognizes that there are some conditions which require that participants be shielded from public view in order to conduct the business in the public interest, we also believe that such occasions are limited and that the conditions should be fully stated.

The inclusion of two sections on the keeping of minutes for both public and executive sessions is intended to reinforce the right to know intentions of the Act. Not only those who are able to attend the meeting, but all interested citizens should have some access to the events through an accurate record. Without such a record, the public would in fact surrender its sovereignty to the agency.

Finally, the inclusion of a provision that implementation of actions taken in violation of the procedures may be restrained by the courts is intended to place the penalty where it is likely to be most effective, namely on interested parties who in one way or another may seek to influence the action against the public interest for private gain. Merely penalizing the official for a misdemeanor, while a step forward, is not likely to insure complete compliance. The possibility that the action will be declared void will serve effective notice that all procedures must be complied with.

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APPENDIX D
3/5/73

comm
oregon sta
portland, oregon 97211 [503] 285-2405

Response to Questions Raised by Members of the Joint Committee on Professional Responsibility - Prepared for presentation March 5, 1973 by Dolores Hurtado, Co-Chairman, Oregon Common Cause PAC

Sujject: Open Meetings Legislation

In response to questions raised by members of this committee during our testimony last week, I would like to file several documents for your information.

First, Rep. Norma Paulus wondered about the origin of the Oregon Common Cause effort in this Legislature. The decision to work on the state level was made by Oregon Common Cause leaders around the state last year. A top priority of Common Cause members in Oregon, as well as nationally, is attempts to revitalize our processes of government. The four issues which Oregon members decided to address are all in this category. The bills were selected, written, and developed by Oregon Common Cause members. Our bills differ from similar efforts in other states. I should stress that there is no national financial contribution to the Oregon effort. It is completely funded by contributions of Oregon members.

Second, in response to Senator Wallace Carson's request for data on the experience of other states with such legislation, we would like to submit a brief summary and a more detailed analysis of some of the positive effects as well as problems revealed in the experience of other states with this legislation. A more detailed analysis is available in the Congressional Record of 8/4/72 which contains Prof. Albert G. Pickerell's article concerning the history of the Browne law entitled: "Agencies and the Public Secrecy and the Access to Administrative Records," and an article by Robert E. Greenberg entitled "An Annotated History of Florida's Sun-Shine Law."

We would like to call your attention to the passage last November by San Francisco voters of a ballot proposition requiring the extension of the open meetings law to meeting of all committeees of boards and commissions, regardless of the number of members in attendance. The measure passed by 212,000 to 39,000. We also note that the 1971 Florida Legislature defeated a number of amendments to limit application of their Sunshine Law, and approved only one amendment which provides for citizen standing and thus enhances the law's enforcement feature.

Finally, in response to Rep. Paulus' question as to whether there is a need for this type of legislation in Oregon, we are presenting today both written letters and personal testimony pointing up problems encountered by press, public officials and the public in seeking to made meetings of public bodies more accessible. After last week's hearing we were referred to Milwaukie City Councilman Bill Hupp for further information concerning the pre-meeting meetings described by the Milwaukie City Attorney last week. Mr. Hupp is at a City Council meeting tonight and is unable to attend this hearing, but asked me to read a letter concerning his position on these meetings. I also call your attention to other letters expressing frustration of citizens about lack of access to meetings of state agencies or county bodies. In addition, three individuals have volunteered to describe their experience with deliberations of public bodies behind closed doors. None of these gentlemen, to my knowledge (although I haven't asked them) are members of Common Cause. They have stepped forward because they are concerned about public access to public bodies while public business is being conducted. Appearing tonight are Stan Pintarich, Tillamook, Miles Green, Portland, and Bob Resseger, Oregon City.

common cause
oregon state office 10 n. e. ainsworth street
portland, oregon 97211 [503] 285-2405

March 3, 1973

EXPERIENCE IN OTHER STATES WITH OPEN MEETINGS LAWS

California passed an open meetings law in 1953 called the Brown Act. It declares that all meetings of a local legislative body or agency to be open and public, with no conditions on attendance by the public. The time and place of regular meetings are to be made known. Special meetings must be formally announced, with adequate notice given. There have been some problems in definition of the "bodies affected and there is an effort now to amend the law to be more specific.

Florida passed an open meetings law in 1967. It is brief and simple, saying that all meetings of governmental bodies are open to the public at all times, that all actions taken at closed meetings are voided with penalties for violators. According to Senator Lawton Chiles..."experience under the sunshine law has shown that the open meetings principle does not hamper public business operations and increases public confidence in government." In 1971 several attempts were made to modify the law, these attempts failed. The only amendment approved so far actually strenghthens the law by providing for citizen standing. Suggested changes that would assure a better practical application are: Clarification of the bodies affected, exemption of personnel matters and a uniform notice provision.

Texas passed an open meetings law in 1967. While approving of the basic reforms contained in the law there is an effort in this years legislature to amend the law. The amendments are in direct response to abuses of the law due to an inadequate definition of "meeting" and "governmental body" and the lack of a provision that required adequate meeting notice and emergency notice provisions. The amended act has already passed the Texas House this year.

New Mexico, Arkansas, New Jersey, Indiana and Washington all have open meetings laws. Most difficulties seem to stem from lack of definition

## I. STATE EXPERIENCE WITH OPEN MEETINGS OR "GOVERNMENT IN THE SUNSHINE" OPEN LEGISLATION.

The increased demands for open government in the United States since World War II seem to have had no specific origin, but an aversion to undue centralization and irresponsible government revealed itself in such political issues as reapportionment and home rule. The emergence of an affluent and better educated society whose attention focused on sophisticated issues strengthens the demands for political responsibility. The increased impact of mass media on society played an important role in directing public attention to inadequacies and abuses of government. Whatever its source, the public's urge to participate more fully in legislated decisions is evident.

Perhaps the Florida Supreme Court sums up the open meetings legislation when it says:

> "The right of the public to be present and to be heard during all sessions of legislation and enactments is a source of strength in our country. During past years, tendencies towards secrecy in public affairs have been the subject of extensive criticism. Terms such as managed news, secret meetings, closed records, executive sessions and study sessions have become synonymous with 'hanky panky' in the minds of public spirited citizens. One purpose of the Sunshine Law was to maintain the faith of the public in governmental agencies. Regardless of their good intentions, these specified boards and commissions, through devious ways, should not be allowed to deprive the public of this unalienable right to be present and to be heard at all deliberations wherein decisions affecting the public are being made."

Studies, reports or law review articles on the effect of open meetings laws in the few states where effective legislation has been enacted apparently do not exist. In some jurisdictions open meeting laws have recently been enacted by the direct vote of

the citizens. Because these laws are so new, the practical effect is still undetermined. Nevertheless, inferences can be made from the sparse facts available:

1. State legislators are moving to enact open meeting laws. Florida, New Jersey, New Mexico, Arkansas and Texas have all recently enacted such laws. In addition, the subject of open meetings is currently being considered in several other states, including Oregon.

2. Citizens do want effective open meetings law. In those jurisdictions where the legislative body has refused or failed to act and the issue is then put to a popular vote, the people have passed the law for themselves. (Colorado and San Francisco).

3. The courts seem to believe that the public right to know is an important citizen right, necessary to promote citizen confidence in government. The definite trend in court decisions is away from a narrow interpretation of open meetings laws so as to apply the principle as broadly as possible.

4. The lack of information on open meetings laws seems to imply that no significant governmental problems have arisen from these laws.

## II. PROBLEMS ENCOUNTERED BY THE COURTS IN OPEN MEETINGS LEGISLATION.

It is clear that absolutes are neither desirable nor attainable, and therefore perfect law is not to be expected. However, the Oregon legislature, in its consideration of an open meetings law, can avoid most of the pitfalls encountered by sister states with such legislation.

III. DEFINITION OF BODIES AFFECTED.

Some controversy and need for judicial interpretation or construction has been caused by inadequate legislative definitions concerning which governmental bodies are affected and which, if any, are not.

The broad language used in Section 1, "Government In The Sunshine Act", has caused problems of construction. All facets of government are included, leaving unresolved the law's applicability to such groups as ad hoc committees, which act in a purely advisory capacity.

Two basic approaches to the solution of the problem are:

1. Using broad language, such as the Florida law, and then providing specific exceptions, leaving all other bodies included.

2. The California law, on the other hand, utilizes the reverse technique of the inclusion of those bodies specifically affected. In either event it is vital that the act begin with a precise statement of legislative intent since appellate courts are known to pay close attention to the "intent" whenever a law is challenged.

IV. DEFINITION OF "MEETINGS". 3/5/73 Hurlado - Common Cause

The most consistent cause of litigation concerning open meeting laws has been the lack of specificity in the definition of the "public meeting" which is required to be open.

A Florida statute enacted in 1905 was interpreted by the court to require meetings to be open only when votes could be taken, though they were not necessarily certain to be taken.

This led to the passage of the 1967 "Government In The Sunshine Act". However, the Act did not include a definition of meetings, so the courts have once again been called upon to provide this definition. As the courts now interpret the law, it is to cover any gathering of the members where the members deal with some matter on which foreseeable action will be taken by the board.

California, operating under the Brown Act, has had two appellate court decisions with opposite holdings. (The most recent of these decisions applies a broad construction to the statute).

In addition, since the Brown Act applies only to a quorum of any committee, Proposition E was presented to and passed by the voters of San Francisco last November. This proposition requires that all committee meetings of boards and commissions, regardless of the number of members in attendance, be open to the public. This was necessary to prohibit subcommittee members from holding private meetings.

The following argument for Proposition E is taken from a voters' handbook published prior to the last election:

> "Proposition E would strengthen at the local level the Brown Act, a state law which requires all public agencies to perform their work in public.
>
> "The Brown Act states that committees of public boards and commissions that are made up of a quorum must be open and public. Proposition E would mandate that all committee meetings of city boards and commissions, regardless of the number of committee members in attendance, be open and public. This would prohibit, for example, a subcommittee made up of two committee members from holding a private meeting in secret.

"Proposition E would also provide enforcement power to Charter Section 3500 by invalidating any action taken at a regular or special board or commission meeting that is not open to the public. There is no provision in the Brown Act or our charter at the present time to invalidate actions taken at meetings that violate the act.

"Proposition E makes exceptions for city boards and commissions when they hold executive sessions for the purpose of considering personnel matters; conferring with legal counsel; or conferring with the attorney general, the district attorney, or peace officers on security threats to public buildings and the threats to the public's rights of access to public buildings or services.

"A vote for Proposition E is a vote for the public's right to know the business of city agencies."

This proposition was endorsed by Joseph L. Alioto, mayor of San Francisco, California assemblyman Leo T. McCarthy, and assemblyman Willie L. Brown, Jr., among others. No argument appeared against Proposition E's open meetings proposal. It was passed by the people on a vote of 212,784 for to 39,738 against.

* * * * * *

Senator Jack Ripper
Rep. Robert Ingalls

SUBJECT: Support for Senate Bill 15

As a citizen, and as an elected member of the Milwaukie, Oregon City Council I want you and the members of the committee to know that I strongly support Senate Bill 15. I have heard that you questioned the need for this kind of legislation in Oregon. Please let me assure you that in my opinion we do need it if the public's best interests, and the public has the right to know what is going on in their government is to be possible. Right here in Milwaukie our city council started holding closed meetings in a lush resturant prior to the OPEN council meeting which followed. Believe me, these were definitly CLOSED to anyone but council and sometimes city staff untilpublicity shamed the council to moving them from the "dinner" meetings at tax-payer's expense, to a tiny room in city hall.

From the start I have objected strenuously and refuse to attend them. Two of us on the council feel these meetings are wrong and so do not attend, but the mayor and the other two members of the council continue to meet in a non public meeting prior to every OPEN council session.

Allow me to state my objections to these unnecessary PRE-COUNCIL MEETINGS. They are held informally for the purpose of discussing every item on the following meetings agenda. The arguments and the positions taken on every item on the agenda, and more often than not, a poll of the members is taken hopefully to learn how the vote will go at the subsequent OPEN meeting. And of course, "leg twisting" has often been resorted to to change minds and votes to produce a desired result upstairs. I am fully aware that what I have said would be denied by the mayor but I will swear under oath to the truth of what I have just stated.

My position has always been that I have nothing to say at a PRE-COUNCIL meeting I would not say at an open meeting and it is my sincere belief that those who WANT these meetings, want them because they would prefer their arguments and positions may not have to be shown on the RECORD of the official, following meeting. If this were not a fact, then WHY should it ever be necessary to hold them AT ALL. You may draw your own conclusions, but these are the facts as I know them over the past 2 years here in Milwaukie. Our present mayor set them up when he was elected. They were never held before he was elected and in NO WAY can they be justified in my most sincere opinion.

Please, let us enact into law that whenever a quarum meeting is held for the purpose of discussing THE PUBLIC'S BUSINESS, THAT MEETING BE OPEN, AND ADVERTISED TO THE PUBLIC SO THEY CAN KNOW WHAT IS GOING ON IN THEIR GOVERNMENT.

Sincerely, Bill E. Hupp Milwaukie City Council

absence from meetings of the council for a period of 60 days without the consent of the council. [Section 16, as amended by election held November 3, 1964.]

Section 17. Manner in Which Vacancies Shall Be Filled. Vacancies in office filled by election or by appointment by the council shall be filled by appointment by the council at any regular or special meeting, and the person so appointed shall serve the full unexpired term and until his successor is chosen and qualified. A majority vote of the whole membership of the council shall be necessary to fill a vacancy in the office of mayor. Vacancies in office filled by appointments by the mayor shall be filled by appointment by the mayor. Vacancies in office filled by appointment by the manager shall be filled by appointment by the manager by and with the approval of the council and, where applicable, subject to the civil service sections of this charter and the duly enacted rules thereunder. An officer appointed to fill a vacancy within the classified civil service shall qualify for said office in accordance with the provision of the civil service provisions of this charter and the duly enacted rules thereunder and all other officers shall, within 48 hours after their appointment, qualify for the office, and unless such officers so qualify the office shall be considered vacant. During the temporary absence of any officer from the city for any cause, his office may be filled temporarily in the manner provided for filling a vacancy in office. [Section 17, as amended by election held November 3, 1964.]

## CHAPTER V

## The Council

Section 18. Council Meetings. The council shall provide for the time and place of its regular meetings and adopt rules and regulations for the government of its members and proceedings. It shall hold at least one regular meeting each month. Special meetings of the council shall be called by the mayor either upon his own motion or upon the request of at least two members of the council, and held at any time, upon verbal or written notice to all of the members of the council then in the city. Special meetings of the council may also be held by the common consent of all members of the council.

Section 19. Quorum. Three members of the council shall constitute a quorum to do business, but a smaller number may meet and adjourn from time to time to compel the attendance of absent members in the manner provided by ordinance. The council shall keep a journal of its proceedings, and on the call of a member shall cause the yeas and nays to be taken and entered in the journal upon any question before it

See Next Page

except a motion to adjourn. The proceedings of the council shall be public.

Section 20. Mayor's Duties at Council Meetings. The mayor shall be chairman of the council, shall preside over its deliberations, and shall have authority to preserve order, enforce the rules of the council, and determine the order of business, subject to the rules of the council. He may vote as a councilman.

Section 21. President Pro Tem. In absence of the mayor the council shall elect one of its members to be president pro tem.

Section 22. Vote Required. The concurrence of a majority of a quorum shall be required to determine any matter before the council.

## CHAPTER VI

### Powers and Duties of the City Officers

Section 23. Mayor. The mayor shall appoint the various committees provided for under the rules of the council or otherwise and fill all vacancies in committees of the council from that body. He shall sign all ordinances and written resolutions and orders approved by the council, and countersign all orders on the city treasurer. He shall have no veto power, and shall sign all ordinances passed by the council within three days after their passage. He shall sign all instruments and writings authorized by this charter, the laws of the state, or the council.

Section 24. Manager.

(a) Qualifications. The manager shall be the administrative head of the city government. He shall be chosen by the council without regard to political consideration and solely with reference to his executive and administrative qualifications.

Before entering upon his duties the manager shall file with the mayor an official bond for the faithful performance thereof, payable to the city in the sum of at least $5,000.00, the premium of which shall be paid by the city. The bond shall be to the satisfaction of the council, and the approval of the mayor shall be endorsed thereon.

(b) Term. The manager shall be appointed for an indefinite term, but may be removed at the pleasure of a majority of the council. Upon any vacancy occurring in the office of the manager subsequent to the first appointment hereunder, the council shall, at its next meeting, adopt a resolution of its intention to appoint a manager. No such appointment shall be made until at least four weeks after adoption of the resolution. The council shall appoint a manager within a reasonable time after the

March 5, 1973

TO: Joint Committee on Professional Responsibility
FROM: George Diel, PO Box 404, Rockaway, Oregon 97136
RE: Experiences with Closed and Late Meetings of Tillamook County Planning Commission

Co-Chairmen Ripper and Ingalls and Members of Joint Committee:

I have been a property owner in Tillamook County since 1964 and, more recently, have become a registered voter in that county.

Two years ago I had frequent opportunity to observe the unbelievable performance of the then-County Planning Commission. And because the commission was dominated by real estate-related interests, I became one of hundreds of citizens who sought to have the planning commission reconstituted for one with more balanced membership and with greater responsiveness to the public interest.

My first head-on confrontation with the controversial planning commission came in a hearing over expansion of a trailer court on the dunes area at Watseco, just south of Twin Rocks. It was at this meeting that the planning commission made its decision before testimony from the public was received and it was obvious that the decision had been reached in some manner prior to the meeting.

Soon after that hearing, conditional use application was made for a motel-restaurant complex on the dune in front of Twin Rocks. Again, it was clear from the outset that a majority of the members of the planning commission were determined to grant approval of the project regardless of the nature of the testimony, the recommendations of their own staff and the findings of professional consultants brought in at the request of the county commissioners.

On the evening to which the hearing had been continued, an attorney representing the Twin Rocks community (Tom Kerrigan of Portland) and I stopped at the planning office for some information about the application a half-hour or more prior to the scheduled public meeting. We rapped on the closed door and eventually the planning director, Richard Smith, came to the door. When we looked inside, we saw most of the members of the planning commission assembled, obviously for the purpose of discussing the conditional use application. Everyone in the room became frozen in silence while the door was open, which was for a minute or so while Mr. Smith gave us the information we requested. The pre-session meeting then continued when we left and the door was closed again.

When the regularly-scheduled public meeting commenced, there could be no doubt that the official proceedings constituted so much post-facto role playing; that decisions were already made, either during the secret session or previously or both. The conditional use application was granted and many unusual aspects of the case led to litigation which is continuing to this day.

 6

It was at this or the next regular session of the planning commission that the business session continued for many hours -- and after regular business had all been disposed of and members of the public had left, the planning commission acted to discharge the planning director for "disloyalty," a charge which later was changed to "inefficiency" (although the public is convinced the firing resulted from his opposition to projects in which some of the planning commission members had interests).

Several other unscheduled, post-session decisions came at later meetings before public observers learned that they must not leave no matter how late the sessions ran. One of these late surprise moves was to zone the remaining unzoned portions of the county A-1, a permissive zone which at that time permitted around 40 uses outright. (This action was almost immediately rescinded by the Board of County Commissioners.)

It is impossible for me to say how many pre-meeting and post-meeting decisions occurred during the period in which planning and zoning were completely in control of real estate-oriented forces in Tillamook County, but my judgment is that they were nothing new.

Today there is an almost entirely changed membership in the planning commission, with only one individual surviving from the planning commission as constituted when the Twin Rocks and similar land-use controversies erupted in Tillamook County. To the best of my knowledge, the present planning commission holds no such secret or surprise late-hour decision-making sessions and when work sessions are called, they are announced and open to the public.

What is important -- as much for improvement of local government, which can be so vulnerable to pressures of special-interest blocs, as for protecting the public interest -- is some statutory prohibition against closed meetings. Such a guarantee for open meetings to assure public access to the formulation of public policy -- along with other planning and land-use reforms currently before the Legislature -- will protect the public interest and the threatened land resources throughout the state.

If the comic-opera played on the Tillamook County Planning Commission stage is to have any value, it is to stress the urgent need for such reform and for strong land-use legislation.

You may enter these comments in the record.

Respectfully,

George Diel

George Diel
Chairman, Twin Rocks-Watseco Defense Committee; Board Member, Oregon Shores Conservation Coalition; Vice President-North, Tillamook Tomorrow.

224 Iron Mountain Boulevard
Lake Oswego, Oregon 97034

March 3, 1973

Senator Jack Ripper
Representative Robert Ingalls
State Capitol
Salem, Oregon 97310

Gentlemen,

I am very concerned that the public needs to have more grass roots input into the decisions of policy making bodies. I urge you to include in the open meetings bill, S B 15, a definition of sub-committees of state agencies. If the public has no access to work sessions of state agencies and is allowed to testify only at hearings on the final policy statement, this is simply a form of token public participation.

For example, the Nuclear and Thermal Energy Council follows the rules established by the Administrative Procedures Act. One of the most important jobs of the Nuclear and Thermal Energy Council is to establish a state wide siting survey to determine what areas of the state are suitable and unsuitable for power plant siting. A sub-committee of the Council was set up to do this job. It had as its chairman Dr. C. H. Wang, a member of the NTEC and twelve state agency members. The interested public were not allowed to be on the sub-committee, nor were they notified of any work sessions, so the public had no input whatsoever on this very crucial matter. True, hearings on the final survey were held around the state and were poorly attended, for what was there to say? The hearings were an "after the fact." The decisions had already been made, and the public had had no part in it.

Please include in this bill a means by which the public is notified of, invited and permitted to attend the work sessions of the sub-committees of the various agencies, boards and commissions of the state.

Very truly yours,

Norma Jean Germond

(Mrs.) Norma Jean Germond

APPENDIX E
3/5/73

CITY OF SALEM, OREGON
City Hall / 555 Liberty St. S.E.
Zip Code 97301

CITY MANAGER'S OFFICE
Telephone (503) 588-6254

STATEMENT ON HB 2157 and SB 15
JOINT SPECIAL COMMITTEE ON PROFESSIONAL RESPONSIBILITY
on behalf of the City of Salem
February 26, 1973

Introduction

Because there is a conflict this evening with the bi-weekly schedule of City Council meetings, Salem's City Manager and City Attorney are not able to testify before the Committee. However, to allow your deliberation to include the remarks of the City Manager and City Attorney, the following is provided:

1. Regarding Senate Bill 15, the City Manager has directed a letter, dated the 6th of Feb., to Senator Potts that is attached for reference. This attachment offers suggestions for possible amendments based on the City of Salem's experience with meetings of the City Council.

2. Regarding House Bill 2157, the change which is brought to your attention for possible amendment would be as follows:

To Section 12, Paragraph 6; add the following sub-paragraph:

(d) Discuss with and receive advice from legal and management employees of the public agency on any matters relating to pending or impending litigation before any court or commission, agency or board of arbitration other than itself.

The basis for making this request is identical to the position made on the attached comments regarding Senate Bill 15.

Respectfully submitted,

R.E. Abolt
Assistant to City Manager

APPENDIX G
3/5/73

R. B. Resseger
19348 S. Ridge Rd.
Oregon City, 97045
March 5, 1973



I am primarily familiar and concerned with the manner in which the Clackamas County Planning Commission functions. I believe that the troubles which have plagued this department are largely due to its policy of conducting public business behind closed doors. In 1968, the people of this county, by initiave petition, rejected the imposition of blanket land use controls which had been applied without public participation or adequate notification. We were widely damned by our elected officials and the press as "the crackpot capitol of the world". This was an easy way to write off the official failure to consid- any public input when dealing with the public's welfare. Last year, the public iniation and overwhelming approval of The Natural Rivers Measures in Clackamas County, demonstrated that when planning is moved out of the back room and into the public arena, the public acts responsibly to protect its interests. Many rural areas in our county are now taking the initiave in seeking land use controls suited to their local conditions. They are seeking, but they are not necessarily finding the answers bacause planning, in our county, has traditionally discouraged public participation.

Last Spring, the County Planning Commission adopted the by-laws under which it now functions. The operations of this body are certainly of concern to the public, yet there was no public announcement, no public discussion or participation and the by-laws as adopted, were never made public. It is difficult to understand why the rules of conduct governing a public body should not be general knowledge.

On March 28, 1972, the Clackamas County Planning Commission met to consider application for Open Space classification under ORS 308. Unknown to most of the applicants and to the public at large, The Planning Commission had drawn up its own criteria for evaluating

these applications. The public was unaware of either the existence or the content of the criteria by which the applications were to be judged. The applicants had read the relevant state law and obtained applications from the county but were not informed of the county's more restrictive criteria until the night of the hearing. It was apparent to the public that night and later confirmed by an opinion from the office of the Attorney General, that the criteria adopted privately by the County Planning Commission did not reflect the full intent of the state law. Had there been public discussion of the county's criteria, not only the public, but the members of the planning commission would have been better informed. This was shown when the The Planning Commission failed by one vote, to obtain the majority necessary to confirm a staff recommendation for denial of an application. The Commission found it necessary to adjourn to the back room for over thirty minutes and when they reconvened, one member changed his vote to supply the necessary majority. Whatever information or clarification was given to this member in the back room would certainly have been welcomed by the public. It is a handicap to participate in a game when you don't know the rules.

The procedure for approval of subdivisions in this county would be a joke were it not for the serious consequences to the total community. Subdivision applications are approved by the boxful merely on the basis of the staff statement that they all meet the minimum established physical requirements. There is no public discussion, no public notification, no public participation and thereby, no consideration of the possible effects on a community's schools, property values, public services etc.

There is nothing in our present laws to prevent men of good will from conducting the public's business in a public manner, but the fact is that much public business is conducted privately. I believe that this is responsible not only for much voter apathy, but for the disproportionate influence exercised by well organized pressure groups.

As surely as any public official owes his office to those whose interests he is charged to serve, he owes them the right to share in all of his actions which affect their interests.

Thank You.

STATEMENT BEFORE
JOINT COMMITTEE ON PROFESSIONAL ...
ON SENATE BILL 15 AND HOUSE BILL 2157

Mr. Chairman, Members of the Committee:

I am Chris Dudley, representing the Oregon School Boards Association, 1201 Court Street N. E., Salem, Oregon.

We have no objections to an "open meeting" law, as such, but we do think that this issue can be best left to local discretion. Traditionally, the press has been an active and adequate policeman of abuses, and we see no compelling reason to legislate in this area. It should also be pointed out that it is current practice in many school districts to allow members of the press to sit in at executive sessions.

If an "open meeting" law is to be enacted we think that the provisions, as they affect local school districts, have to be realistic and recognize legitimate reasons for closed meetings. Because of our concern that "open meeting" requirements be cognizant of and responsive to problems of governing local school districts, we would suggest that the following things be excluded from the requirements:

(1) Any deliberations involving an individual's character or reputation, including any such action involving staff, students, parents, appointments to boards or committees or appointments to fill vacancies on the board.

(2) Issues concerning site acquisition.

(3) Consultations between a board and its legal counsel on matters involving litigation or potential litigation.

(4) Meetings held to determine district strategy with respect to staff, student or public demonstrations or potential demonstrations.

(5) Meetings involving labor negotiations and matters related thereto.

(6) Meetings of a committee or subcommittee consisting of less than a quorum of board members.

(7) Emergency meetings in cases where protection of public safety and property might be endangered by delay due to requirements for giving appropriate notice of meetings.

A further concern that we have relates to a specific provision of SB 15: Section 11 makes violation of the provisions of that bill a misdemeanor. We do not think that this is appropriate. Violation of provisions of an "open meeting" law by a local board member would more appropriately be considered a civil offence, such as malfeasance in office. In any case, violation should not be a criminal offense and we oppose any provisions to that effect.

Oregon School Boards Association

February 26, 1973

February 6, 1973

Senator Eugene Potts, Chairman
Senate - State And Federal Affairs Committee
Room #12, State Capitol Building
Salem, Oregon 97310

Dear Senator Potts: Subject: Senate Bill 15 - Public Meetings

In reviewing Senate Bill 15 with its proposals for open public meetings of all public agencies of the State, I would like to make some suggestions for possible amendments based upon the City of Salem's experience with meetings of the City Council. The changes which I would respectfully ask that you review and consider are as follows:

In Section 3, Paragraph 2, add the following:

> "Provided, however, any person desiring to appear before a legislative body may be required as a condition thereto, to identify himself by giving his name and address."

This appears to be a normal condition for anyone making formal presentations before City Councils and would perhaps eliminate any confusion over this requirement which is really for the convenience of obtaining an accurate record of facts presented and a guide to later contacts with persons making formal appearances.

Under Section 8, we would also suggest the addition of two sections, (c) and (d), which would add to further reasons for holding executive sessions. These suggestions are:

> (c). To consider matters pertaining to labor negotiations of the public body with its employes.

If negotiating or bargaining sessions are to have any meaning then the development of positions and strategies to be employed by persons representing the employer cannot be arrived at in public session.

> (d). Discuss with and receive advise from legal and management employees of the public agency on any matters relating to pending or impending litigation before any court or commission, agency or board of arbitration other than itself.

This section would enable a legislative body to discuss positions, strategies and approaches to such items as purchase of land, condemnation proceedings, etc., which are matters that cannot again be discussed in public if the public agency is to perform in the interest of the public it serves.



I would hope that the Committee would give consideration to these possible amendments. I am sure that the Salem City Attorney or myself would be glad to appear before your Committee to answer questions on these points or to explain any of them further for your information.

Yours very truly,

Robert S. Moore
City Manager

RSM/sh

Testimony before the Joint Committee on Prof
March 5, 1973 Miles Green, 165 NE 17

APPENDIX F
3/5/73

I would like to present some observations in from my job as a reporter for The Oregonian. My statements are being made as an individual, and as a professional reporter, but they do not necessarily reflect the views of The Oregonian.

Until January 1, I covered the Oregon State Highway Commission and the Tri-Met board for The Oregonian. Both boards held most of their discussion sessions at times other than their public meetings, even though they normally took official action in public. The State Highway Commission held a short meeting before its official public meeting, and then met again after the public meeting. These sessions were held in the office of Highway Administrator George Baldwin. Those attending were the commission, the State Highway Engineer and his deputy engineer, and Mr. Baldwin. Other staff people were called in for special presentations from time to time. When I found out about the meetings, I asked if I could attend, and I was told that I could. I was told the meetings are for convenience, and to make it easier for the commission to accomplish its work, and are not held for purposes of secrecy. I also was told that I was welcome to attend the meetings held by the Tri-Met Board in the University Club before each of its public meetings. This invitation also came after I had heard that the meeting was being held, and I was not informed of the meeting by Tri-Met previously.

I attended the informal sessions of both the Highway Commission and the Tri-Met board with the understanding that I was free to report what was discussed, except for personnel and property matters, and I did stories which referred to discussion and actions taken by the two boards in the meetings. While I was free to attend the meetings, after I found out that they were being held, there was no notice ever given the press about them, and it would have been most difficult, if not impossible, for the public to attend. There was little room for visitors, and the sessions were held in rooms which generally are not accessible to the public.

My major concern about these kinds of sessions is that it is at these non-public meetings where much of the discussion takes place before a decision is made. The result is that the public meetings of both the State Highway Commission and the Tri-Met board tended to be short and perfunctory, with little comment from any members except the chairman.

There were times when major decisions were arrived at in these sessions. For example, it was at one of these meetings that the State Highway Commission heard a report from its legal counsel on possible effects of a freeway moratorium in Portland and Multnomah County, and then agreed to halt the Environmental Study of the Mt. Hood Freeway if a moratorium was declared. This action was taken in the informal meeting after the public highway commission meeting. No reference was even made to the moratorium, or its possible consequences, during the public meeting. The Tri-Met board also often gave approval for the start of planning studies in its non-public meetings in the University Club, and it often heard staff reports and reached agreements on how to handle items which would be brought before it at the public meeting afterwards.

I believe the style of informal, and non-public discussion which has typified the highway commission and the Tri-Met board is not in the public interest. What I was most often told when I questioned the wisdom of holding pre- and post-meetings along with public meetings was that board members needed to have a time when they could let their hair down and discuss and disagree without the public present. I can see some merit in establishing a meeting format where there is time enough for free and open discussion, but I do not think it should be done at the expense of the public's right to be present during the give-and-take which precedes the making of decisions. The public has a right to be present during the decision-making process, not just to be present when decisions are announced. I believe an Open Meeting Bill would help assure that this will happen. Thank you.

3-5-73 lh

HB2157 7'
SB15



# Seaside General Hospital

725 S. Wahanna Road
P.O. Box 1028
Seaside, Oregon 97138
Phone 738-6363

February 23, 1973

The Honorable George Cole
State Office of Representatives
State Capitol Building
Salem, Oregon

Dear George:

This came this morning. In repards his points, here's some of my views:

A. Legal definition needed -

B. This should be carefully considered as it is a major problem with all public administrators I talked to. We, ourselves, have been subject to a great deal of inaccurate and distorted news articles. In the highly technical and complicated business of operating a hospital with its associated medical staff, it is virtually impossible for the average reporter to acquire the knowledge to accurately report on all activities.

C. The learning process by which we establish our quality of patient care is based on review by our peers or supervisors. This process, to be effective, requires the truthfulness of confession. The impairment of this process should be carefully guarded against in any bill of this type.

D. This should be a major consideration. If accountability to the public is to be public policy, it should be dealt with by legislation including all hospitals. The elected board of a district hospital and the legal requirements of fiscal auditing and budgeting would appear to me to give adequate control to the public under present accountability policy.

Thanks for your attention.

SEASIDE GENERAL HOSPITAL

W. I. O'Harra,
Administrator

WIO/wy
Encl.
cc: C. Gordon Thurman, Admn
North Lincoln Hospital

3-5-73 ch

file Loretta 78
HB2157
5B15

FEB 26 1973

OREGON STATE ARCHIVES

# Umatilla Hospital District No. One

[illegible] G. Street • P.O. Box 540 • Umatilla, Oregon 97882 • (503) 922-3201

FEB 26 1973

February 23, 1973

Mr. Robert Ingalls, Chairman
Professional Responsibility Joint Committee
State Capitol Building
Salem, Oregon 97310

Dear Mr. Ingalls,

I have recently reviewed the contents of proposed Senate Bill 15 and House Bill 2157 relating to open meetings of all deliberations of the District Hospital Board of Directors.

As in any business organization, certain planning sessions are necessary from time to time in advance of decisions released to staff and the general public. My experience has been that when partial information is made available even to our own employees, gross misrepresentation usually results. It just does not seem practical to force open deliberations through legislation.

I also believe another important point is the fact that a hospital board is not a legislative body. It is a group of citizens, elected by the community, serving without pay, as a resource to the Administrator. The chief executive officer is responsible to implement policy of the day to day operations. This bill would discriminate between district hospitals and the majority of hospitals in the state.

The amount of tax support given by law to the district hospital represents a very small portion of the annual budget. In our own case, operational money for only about two weeks is provided by our tax share. I certainly don't feel that this small "help" should give legislative license for such control over board activities. (our hospital is mortgage free and has never taken Hill Burton funds)

I would respectfully request that your committee hearing determine that the district hospital be excluded entirely from such proposed legislation.

Sincerely,

Jack Weemhoff

Jack H. Weemhoff
Administrator

FROM THE DESK OF
REP. ROBERT C. INGALLS
DISTRICT #35
BENTON COUNTY

**240.095 Division authorized to provide services to municipalities and political subdivisions.** (1) The division may enter into agreement with any municipality or political subdivision of the state to furnish services and facilities of the division to the municipality or political subdivision in the administration of its personnel on merit principles. Any such agreement shall provide for the reimbursement to the state of the cost of the services and facilities furnished, such reimbursements to be deposited to the credit of the Local Government Personnel Assistance Account. All municipalities and political subdivisions of the state may enter into such agreements.

(2) The division may cooperate with governmental agencies for other jurisdictions charged with personnel administration in conducting joint tests and establishing joint lists from which eligibles shall be certified for appointment in accordance with the provisions of this chapter.
[Amended by 1969 c.80 §37; 1969 c.489 §5]

**240.097 Local Government Personnel Assistance Account.** There is created in the General Fund of the State Treasury a Local Government Personnel Assistance Account. All moneys in the account are appropriated continuously to the division for purposes of furnishing services and facilities to municipalities and political subdivisions of this state, with respect to the administration of their personnel system on merit principles, under authority of any provision of this chapter.
[1969 c.489 §2]

**240.099 Board authority to provide services to municipalities and political subdivisions.** The board may enter into agreement with any municipality or political subdivision of this state to furnish any of its services and facilities, other than fact-finding or the services of the State Conciliation Service for which no reimbursement is required, and such agreement shall provide for reimbursement to the state of the cost of the services and facilities furnished. All municipalities and political subdivisions of this state may enter into such agreements.
[1969 c.658 §2]

Note: ORS 240.099 was not added to and made a part of ORS chapter 240 by legislative action.

**240.100 Administer oaths; subpena witnesses; compel production of papers.** Each member of the board may administer oaths, subpena witnesses, and compel the production of books and papers pertinent to any investigation or hearing authorized by this chapter.
[Amended by 1969 c.80 §38]

**240.105 Use of public facilities of state or municipalities.** All officers and employes of the state and of municipalities and political subdivisions of the state shall allow the division or board the reasonable use of public buildings under their control, and furnish heat, light, and furniture, for any examination, hearing or investigation authorized by this chapter or ORS chapter 243. The division or board shall pay to a municipality or political subdivision the reasonable cost of any such facilities furnished by it.
[Amended by 1969 c.80 §38a]

**240.110 Records and information to be furnished.** All officers and employes shall furnish any records or information, except records made confidential by statute, or administrative order or rule, which the division requests for any purpose of this chapter.
[Amended by 1969 c.80 §39]

**240.115 Action to secure compliance with chapter.** The board may maintain such action or proceeding at law or in equity as it considers necessary or appropriate to secure compliance with this chapter and its rules and orders thereunder.

**240.120 Records public.** The records of the division and the board, except such records as the rules may require to be held confidential for reasons of public policy, shall be public records and shall be open to public inspection, subject to regulations as to the time and manner of inspection which may be prescribed by the division or board.
[Amended by 1969 c.80 §39a]

**240.123 Board personnel; executive secretary of board.** (1) The board shall employ such personnel as it considers necessary for the efficient administration of chapter 80, Oregon Laws 1969, and fix the compensation of its employes in accordance with the compensation plan for classified employes.

(2) The board shall designate one of its employes as its executive secretary and delegate to him such administrative duties and responsibilities as it finds advisable to carry out the purpose of chapter 80, Oregon Laws 1969. The executive secretary shall be in the classified service.
[1969 c.80 §35e]

Note: ORS 240.123 was not added to and made a part of ORS chapter 240 by legislative action.

3-5-73 ek

# NORTH LINCOLN HOSPITAL

3043 NORTH PARK DRIVE • P.O. BOX 767 • LINCOLN CITY, OREGON 97367
PHONE 503/994-3661

February 20, 1973

To District Hospital Administrators

Mr. William O'Hara, Administrator
Seaside Hospital
Seaside, Oregon, 97138



SENATE BILL 311 - REVENUE BONDS FOR DISTRICT HOSPITALS

We urge your support for Senate Bill 311 introduced by Bay Area District Hospital of Coos Bay. The ability to issue revenue bonds should be added to the powers of a hospital district. The other revenue bond bill is alright for larger hospitals which need a mechanism to be able to take advantage of interest free bonds. However, this is a very awkward and round-about approach for district hospitals.

I understand from Pete that Senate Bill 311 has been referred to the Senate Economic Development Committee, John Burns, Chairman. Your letters to that Committee and to your own representatives in support of the Bill would help assure passage. This Committee will hold a hearing on Senate Bill 311 Friday, February 23, 1973 in Room 407A, Capitol Building, Salem, Oregon at 10:00 a.m.

SENATE BILL 15 and HOUSE BILL 2157 - "OPEN MEETINGS BILL"

As a unit of the government, district hospitals would be subject to the provisions of these bills calling for open meetings of all deliberations of the Hospital Board of Directors. Excerpts from the two bills are attached.

Upon review you may agree with us that this Bill as presently drafted, may seriously handicap the Board and Administration of District Hospitals by virtually eliminating Executive Sessions of the Board when difficult or delicate matters need to be dealt with. The following points could reasonably be made to the Legislators:

A. The Hospital Board is not a "legislative body". It gives direction to a medical institution for the treatment of sick and injured persons under the care of physicians in conformity with State, Federal and many other professional regulations.

B. Premature or distorted publicity on hospital affairs may prevent constructive action and harm the public interest.

C. In discharging its legal responsibility for the quality of patient care, the Board has to deal with privileged information regarding the practice of medicine and touching on the doctor-patient relationship, which usually must be kept confidential.

D. The Bills would discriminate between district hospitals and the majority of hospitals in the State, which have the privilege of Executive Sessions by the Hospital Board.

NORTH LINCOLN HOSPITAL DISTRICT



This Bill is in the hands of the Professional Responsibility Joint Committee. House Members are Robert Ingalls, Chairman; Lindquest, Cole, Dereli and Paulus. Senate Members are Jack Ripper, Chairman; Carson, Fadeley, Harton and Heard.

The best alternative is to get hospitals excluded from this legislation entirely. If that fails, we should attempt to get a paragraph in the exclusion section allowing closed sessions on privileged medical matters.

We understand this Committee will have a hearing on this Monday, February 26, 1973. If you are so disposed, a letter to either of the Committee Chairman or a Committee Member with a copy to your representative seems appropriate. Immediate action will be needed to reach the Committee before the hearing. Thanks for your interest.

Yours very truly,

C. Gordon Thurman,
Administrator

CGT:bjr

Enclosure: Excerpts of Bills 2157 and 15

c.c. Lyle Hasselbrink, Chairman, Board of Directors

3-5-73 ch



103 Snell Hall
Corvallis, Ore. 97332
Mar. 1, 1973

Rep. Robert C. Ingalls
Co-Chairman, Professional Responsibilities Comm.
State Capitol
Salem Oregon 97310

Dear Bob:

I enjoyed sitting in on your committee's deliberations last Monday night. You have an admirable blend of professionalism and humor.

I am taking this opportunity to voice my support for open meetings legislation.

Although it is customary for most government meetings in Oregon to be open, I think we need firm laws on the books that guarantee this right. I do not think that we should wait until a problem develops, any more than we should wait until we catch polio before taking our Sabin vaccine! We live in a wonderful state, and let's keep it that way!

The open records problem is vastly more complicated and will need further study. I withhold judgment on it.

I would like you to devote your energy toward getting us an excellent open meetings bill rather than sending me a personal acknowledgement. Your time is too valuable!

Best regards,

Don

Donald A. Larson

c.c. Loretta Hill

HB2157 85
5015

Telephone 942-3325

MAR 7 1973

Leroy R. Zimmerman, Publisher



Cottage Grove Sentinel

Post Office Box 35 116 North Sixth Street Cottage Grove, Oregon 97424

March 4, 1973

Robert C. Ingalls,
State Representative
State Capitol
Salem, Oregon 97310

P.R

In studying the proposed House Bill 2157, the Freedom of Information bill drafted by Attorney General Lee Johnson, I would like to express my opposition to one portion of that bill.

The portion of the bill to which I object is that which would allow closed meetings for so-called labor negotiations. To date we have been allowed to cover this portion of our budget preparation and we certainly hope to continue to do so. We have fought for the right to cover these negotiations because this expenditure involves nearly 80 percent of our total school budget. To allow closed meetings on this portion of a public budget would be absolutely wrong, in my estimation.

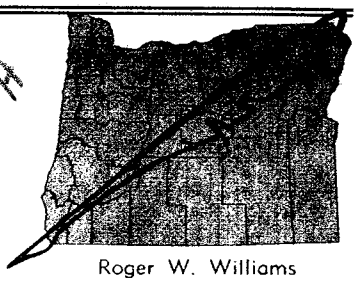
Since I will not be able to appear in person to testify on this bill, I hope you will take this protest into consideration when you consider this bill before your committee.

Sincerely,

Leroy R. Zimmerman

Leroy R. Zimmerman
Publisher

TESTIMONY GIVEN - 3/12/73
W.R. Cowen



**Oregon Newspaper Publishers Association, Inc.**

Roger W. Williams
Secretary-Manager

# STATEMENT OF POSITION
# JOINT COMMITTEE ON PROFESSIONAL RESPONSIBILITY
# SB 15 AND THAT PART OF HB 2157 APPLYING TO OPEN MEETINGS
# MARCH 12, 1973

MR. CHAIRMAN:

MY NAME IS WALLY COWEN. I AM PUBLISHER OF THE INDEPENDENCE ENTERPRISE-HERALD AND FORMER PUBLISHER OF THE MILTON-FREEWATER VALLEY-HERALD. I HAVE SPENT MANY YEARS IN THE NEWSPAPER INDUSTRY. AS VICE PRESIDENT OF THE OREGON NEWSPAPER PUBLISHERS ASSOCIATION - A TRADE ASSOCIATION OF ALL OREGON DAILY AND WEEKLY NEWSPAPERS WHICH CAN MEET THE STANDARDS OF MEMBERSHIP - I AM HERE THIS EVENING TO GIVE THE OFFICIAL POSITION OF ONPA REGARDING PROPOSED LEGISLATION WHICH WOULD REQUIRE MEETINGS OF GOVERNMENTAL AGENCIES TO BE OPEN TO THE PRESS - - THAT IS, THE PUBLIC.

IT IS TOO EASY TO FORGET THAT THE PRESS AND PUBLIC ARE ONE AND THE SAME. THE PRESS IS MERELY THE VEHICLE WHICH TRANSPORTS INFORMATION OF INTEREST TO TAXPAYERS, MANY OF WHOM CANNOT PERSONALLY ATTEND SUCH MEETINGS. AN OPEN MEETINGS LAW, AS PROPOSED IN SB 15, DOES NOT, THEN, AFFORD THE PRESS ANY PRIVILEGE. IT MERELY ASSURES THE PUBLIC THEY WILL HAVE READY ACCESS THROUGH MEDIA TO THE INTERWORKINGS OF THE BUREAUCRACY.

IF THERE IS ANY ONE ISSUE OVER WHICH NEWSPAPERS ARE UNITED IT IS IN THE NEED FOR TOTAL OPENNESS WHEN PUBLIC BODIES MEET TO DISCUSS ISSUES WHICH WILL LIKELY HAVE AN AFFECT ON THE LIVES OF THOSE WITHIN THOSE SPHERES OF INFLUENCE.

THIS ASSOCIATION SEES LITTLE - IF ANY - NEED TO EVER CLOAK MEETINGS OF ELECTED AND APPOINTED OFFICIALS IN SECRECY.

4958 N. Broadway • Suite 305 • Portland, Oregon 97205 • 503/227-2526

ONPA QUESTIONS THE TERM "EXECUTIVE SESSION." THIS IS BUREAUCRATIC JARGON, WHICH TRANSLATED MEANS "SECRET MEETINGS."

NOT ONLY DOES A SECRET MEETING HARBOR THE DANGER OF PURPOSEFUL WRONGDOING, IT - MORE OFTEN - PROMPTS MISUNDERSTANDING AND BROKEN LINES OF COMMUNICATION BETWEEN THE PUBLIC AND THE GOVERNING BODIES. WHEN DELIBERATIONS ARE MADE IN PRIVATE, THE PUBLIC CAN ONLY GUESS THE REASONS FOR A VOTE MADE LATER IN AN OPEN MEETING.

MANY STATES ALREADY CARRY LAWS UPON THEIR BOOKS TO GUARD AGAINST POTENTIAL SECRECY IN GOVERNMENT. OUR SISTER STATES OF WASHINGTON AND CALIFORNIA HAVE SUCH LEGISLATION.

COMMITTEE MEMBERS MIGHT BE INTERESTED TO KNOW OF A RECENT CASE IN CALIFORNIA IN WHICH THE CITY ATTORNEY HAS SUGGESTED A PROCEDURE TO "GET AROUND" THE BROWN ACT. AS REPORTED BY THE CALIFORNIA NEWSPAPER PUBLISHERS ASSOCIATION, THE CITY ATTORNEY SENT A MEMORANDUM TO THE CITY ADMINISTRATOR ASKING THAT THE CITY COUNCIL ADOPT AN OFFICIAL POLICY REQUESTING THE ADVICE OF THE ATTORNEY ON EACH TOPIC TO BE DISCUSSED IN SECRET SESSION.

THE STATE'S BROWN ACT PROHIBITS PUBLIC BODIES FROM DISCUSSING MATTERS IN SECRET WHICH DO NOT PERTAIN TO PERSONAL ITEMS OR LEGAL MATTERS. THESE COUNCILMEN HAVE REPORTEDLY HELD AN EXECUTIVE SESSION AFTER EACH OF THE LAST SIX COUNCIL MEETINGS, DRAWING CRITICISM FOR THE AMOUNT OF SECRECY. EACH TIME THE MAYOR HAS SAID THE SESSIONS HAVE INVOLVED EITHER LITIGATION OR PERSONNEL MATTERS. BUT NO ANNOUNCED ACTIONS HAVE FOLLOWED ANY OF THE CLOSED SESSIONS.

PERHAPS THE MOST EFFECTIVE LEGISLATION PROHIBITING THE SECRET MEETINGS IS THE "SUNSHINE LAW" OF THE STATE OF FLORIDA. THE STATUTE IS 286.011 AND DEALS WITH PUBLIC MEETINGS AS WELL AS PUBLIC RECORDS. IT VIRTUALLY OPENS ALL MEETINGS AND ALL RECORDS TO THE PUBLIC. IT IS INTERESTING TO NOTE THAT WHEN THIS LEGISLATION WAS FIRST PROPOSED A FEW YEARS AGO, THERE WAS MUCH CONCERN THAT THE ACT WOULD HINDER EFFICIENT GOVERNMENT.

THIS HAS NOT BEEN THE CASE, AND THE STATE OF FLORIDA HAS FOUND IT CAN GET ALONG AS WELL WITH OPEN GOVERNMENT AS IT CAN WITH SECRET DELIBERATIONS.

IN CLOSING, LET ME SUMMARIZE THE POSITION OF THE OREGON NEWSPAPER PUBLISHERS ASSOCIATION: WE ARE IN FAVOR OF ALL DELIBERATIONS OF PUBLIC BODIES BEING OPEN TO THE PUBLIC. ANY LEGISLATION WHICH ASSURES PUBLIC ACCESS TO MEETINGS WILL BECOME WEAKER AND LESS EFFECTIVE WITH EACH EXEMPTION ADDED TO THE MEASURE.

OREGON NEWSPAPERS FEEL SURE MEMBERS OF THIS COMMITTEE WILL USE THE UTMOST CARE IN CONSTRUCTING A BILL TO MAXIMIZE THE PROTECTION OF THE PEOPLE FROM SECRECY IN GOVERNMENT, THUS ASSURING A TRULY INFORMED ELECTORATE.

THANK YOU. I WOULD BE HAPPY TO ANSWER ANY QUESTIONS.

WALLACE COWEN
VICE PRESIDENT, ONPA

3/8/73

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Testimony Given 3/12/73
W.R. Cowen, ONPA

APPENDIX A

3/12/73

# THE SUNSHINE LAW

286.011 Public meetings and records; public inspection; penalties. —

(1) All meetings of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation or any subdivision, except as otherwise provided in the constitution, at which official acts are to be taken are declared to be public meetings open to the public at all times, and no resolution, rule, regulation or formal action shall be considered binding except as taken or made at such meeting.

(2) The minutes of a meeting of any such board or commission of any such state agency or authority shall be promptly recorded and such records shall be open to public inspection. The circuit courts of this state shall have jurisdiction to issue injunctions to enforce the purposes of this section upon application by any citizens of this state.

(3) Any person who is a member of a board or commission or of any state agency or authority of any county, municipal corporation or any political subdivision who violates the provisions of this section by attending a meeting not held in accordance with the provisions hereof is guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than $500.00, or by imprisonment in the county jail for not more than 6 months, or by both such fine and imprisonment.

Mr. Phil Bladine
Testimony Regarding SB 15

# Wake Up, Woodburn!

The days when public bodies could take action which would be shielded from the public "for their own good" or "for the good of the district" are gone forever, we hope!

The public's welfare should be taken into consideration before that action is taken.

Also, the possible effect on careers and people involved should be taken into consideration.

The press is concerned about the side effects of facts made public, but has a responsibility to keep the public informed. If the press is not present, minutes should be available.

We respect the right of a district not to reveal everything said during personnel work sessions. But, when serious action is taken (as was taken recently resulting in effective suspension of the superintendent of the school district, Dr. Vince Gallo,) further information should be available to the public.

The damage by inuendo and the undermining of confidence through rumors is far more costly than the presentation of facts as they exist.

Here's a bit of personal philosophy found to be successful that could be applied to most any situation: First, consider the worst possible consequences of an action. Second, ask yourself if you can live with those consequences. If you can, do it. If you can't, consider other action.

If action is carefully considered and above board, it wouldn't be necessary to either ask the press to "be kind" or criticize the press for printing the facts as they are available. If the facts are not available, you can't blame the press for searching for the truth.

In situations that might be misconstrued, a formal press release is the best route...perhaps even accompanied by a press conference to allow questions from the press and clear the air.

The public's business should be public. * pn

*Carl Rowan, Oregon Newspaper Publisher's Association luncheon speaker, February 16, Eugene, Oregon

# An Apology Is Due---

Members of the Woodburn School District Board of Directors appear to have made a grevious error in their recent action against superintendent Vincent Gallo.

If the action were meant to be simply disciplinary against Dr. Gallo, then it was indeed too severe. If it was meant to force a resignation, it failed. If it was meant to precede stiffer action, then why the reinstatement a week later?

If the action of freezing funds was not meant to cast doubts on conditions surrounding the suspension, it was ill-timed.

Grey areas still exist in the public's eye

True, the board stated publically that the suspension did not come because of moral turpitude or irresponsibility in financial affairs of the district.

That still leaves a host of other possibilities limited only by the imagination.

If the board acted too hastily or while under emotional strain they owe the superintendent a public apology. If they were wrong, they owe him an apology. Even if they think their actions were justified, they owe him an apology for the manner in which it was handled and the manner which they handled public information during that time span.

If there are mitigating circumstances, the public should be told. pn

Mr. Phil Bladine

Appendix B

(3/12/73)

In action taken during a special executive session last week Dr. Vincent Gallo, Superintendent of Marion County School District 103C, was effectively suspended for a period of just over one week.

Minutes from that meeting described the action as follows:

**"Moved by Pauline Neal and seconded by Neal Reiling to hold the Superintendent's job description in abeyance until February 20, 1973, at the hour of 7:30 p.m., at which time the Board will meet in Executive Session with the Superintendent and Assistant Superintendent to further discuss the management policies of this District. The Superintendent is to be absent from the buildings and shall communicate with the Assistant Superintendent only by phone until February 20, 1973, at the hour of 7:30 p.m. Motion was unanimously carried."**

The meeting convened at 1:22 a.m. and adjourned at 1:27 a.m.

Members present included chairman, Robert Wells, Pauline Neal, Neal Reiling, Vern Coleman and John Stegen. Also present were Dr. Gallo and the Assistant Superintendent, Dr. Jens Robinson.

During the February 19 regular board meeting the announcement was made and the following formal statement read by chairman Wells:

**"The Board doesn't have all the facts as yet. It is a personnel matter and is very confidential."**

As directed by the Board, Dr. Gallo has spent the past week attending legislative sessions and hearings in Salem. He prefered not to make a public statement and indicated that the disagreement stemmed from different intrepretations of the respective responsibilities of administration and board members.

Last month the board renewed Dr. Gallo's contract for three years with an increase in salary.

The decisions reached at last evening's meeting with the Board were not known by press time. However, board member Vern Coleman expressed optimism prior to the meeting that an agreement could be reached.

(see editorial inside)

# No One Wins.....

"The great masses of the American people prefer tranquility to liberty" was a comment made by columnist Carl Rowan last week at the Oregon Newspaper Publishers Association (ONPA) meeting in Eugene.

In Woodburn we're sure that most readers would like to hear about happy things: How great it is to live in America - Why we should respect the flag - compliments for jobs well done - and the joy of motherhood.

However, this week we must face a very serious issue head on. We can't afford the luxury of platitudes.

Over a year ago the citizenry of Woodburn charged the school board with the awesome responsibility of seeking out and hiring a new school superintendent.

A committee of citizens helped them with the final selection.

First and foremost, they wanted a strong adminstrator and innovator. They wanted someone who could cope withthe Woodburn educational problems. Problems that would intimidate a lesser administrator into by-passing the Woodburn education scene.

Their choice was Dr. Vincent Gallo. He was immently qualified. He was not afraid of the challenge of redeaming past errors. He was willing to be the strong administrator the board and the citizens committee were seeking.

Dr. Gallo has served the Woodburn school district well. His method of dealing with people has come under attack, and often rightly so.

Dr. Gallo has the support of many community leaders. They refuse to let a short length of time disprove their original thesis that a strong, well-educated head of the system can make better education happen for the kids in Woodburn.

Now, less than a month after they evaluated him (and in doing so, asked him to work on shortcomings) the school board has taken serious action that casts doubt in the minds of many.

It is difficult to believe that the position of a man who received such strong board and community support last month could degenerate so quickly.

Is Woodburn such a difficult place for administrators to work that we lose three within the past five years?

Granted, low budgets have made good education more difficult to achieve than in "richer" districts in the state. That means you have to work harder.

We do not believe that Dr. Gallo is not without fault. Nor are teachers and other administrators without fault. Nor is the Board of Education without fault.

We do believe that each group must stop and look at their position with an eye to the future of education in Woodburn.

Not long ago the Independent criticized some teachers for taking salary negotiation action which would, in our opinion, make passing budgets more difficult in Woodburn.

Now we criticize both the Board of Education and the Superintendent for allowing a situation to develop that will ultimately damage the progress made toward good education in Woodburn.

We admonish them to try again. To reconsider differences the board should look at supporting the man who had support less than a month ago. the superintendent should look at improving personal relationships. It's tough.

Bring in a third, neutral party. Work at school administration keeping in mind that the Board of Education is the public's watchdog, and that actual administration lies with the people hired to do the job. pn

TESTIMONY GIVEN - 3/12/73
Hal Schiltz

HB 2157, SB 15
APPENDIX C - 3/12/73

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Southern Douglas County's Newspaper

# THE MAIL

POST OFFICE BOX 729 TELEPHONE NO. 863-4221

MYRTLE CREEK, OREGON

In the Heart
Of the World's
Last Big Stand
Of Douglas Fir

12 March 1973

Hal W. Schiltz
PUBLISHER

Joint Committee on Professional Responsibility,
Oregon State Legislature,
Salem, Oregon.

Gentlemen:

Concerning the present Open Meeting legislation, it is gratifying to see official concern over what has been a consistent problem in every area of the state in which public bodies have found it a convenience to hold "closed" sessions on certain matters. In many cases, I am sure that this has been done with the very best intent.

And it is with this same "best intent" that in proposed bills certain exemptions have been sometimes included. But more often than not, such meetings are not really secret, in that information leaks out from someone, generally a member of the body itself, bringing with it added complications. And, even if this were not the case, from our standpoint which is covered in the accompanying editorial opionion in our last published newspaper, no reason is sufficient to offset the right of the public to know what goes on concerning its public body's practices and/or that body's employees.

One of the saddest commentaries one can make about an individual is "that he meant well", for it is an indictment of failure. And it is also the same of legislation, which, in its effort to protect a single situation sets up barriers concerning many other matters that should have no such protection.

Most Sincerely,

Hal W. Schiltz

Hal W. Schiltz

## THE OPEN MEETING LAW

In contrast to our questions concerning the shield law, this newspaper advocates an unqualified open public law. Some of the bills in the legislative mill have proposed exceptions as we have previously stated. (See the last part of paragraph 2.) And on first glance they may look justifiable.

In the case of personnel matters, there are times when discussion in public could lead to erroneous comments made by the members of the public body leading to suits for defamation, slander, and other such charges. But at the same time, if discussions are in strict confidence, it has been all too easy for a public body rather than face up to justifiable cause against a public employee in their hire, to gloss over by secret dismissal such employee, who again seeks employment in a like situation with another similar body, unaware of the deficiencies which led to the dismissal. The result is that still another public body goes through the painful situation of the first. If such meetings were open, there would be more caution on the part of the public body to listen to and act on matters which might readily prove unfounded – a protection to the individual – and too, it would act as a pressure upon the employee to perform his duties in a normal acceptable manner.

In the case of the second concerning acquisition of real estate, the need for secrecy is upheld under the very real assumption that the price of the considered property will probably go up, if the proposed acquisition is a matter of general knowledge. However, secrecy in this matter has two edges. The other is that by secret acquisition, property has been obtained unneedfully and not to the best interests of the public, which would have been exposed if the public had been aware of the purchase. Again, secrecy lends itself in real estate acquisitions to all manner of manipulations of a questionable nature. It would seem from here that it would be cheaper for the public to be liable for a higher price than to be the uninformed purchaser.

And exemptions are proposed for the discussion of salary matters, but this newspaper sees no justification whatever this one. Understandably, a public employee would refer to have the exact extent of his



public employment income kept quiet, but such is not to the best interest of his employer, the taxpaying public. And its revelation on occasion simply should and must be one of the handicaps of going into a public employment career. There are a number of advantages to positions – a greater security of employment, a remuneration guaranteed from the public purse, generally speaking greater opportunities for regular wage advancement, a guaranteed retirement program, longer vacation periods, more allowable sick leave, to mention a few – than are available in many positions of private employment. It does not seem that the revelation of salary should interest the public, paying the bill, is entitled to know. prove any great hardship. And it is a matter of public

We would not advocate as tight a law as that recently passed in the state of Washington. The open meeting law is so tight there, it has been held that two members of a public body could not go to the same meeting without violating the open discussion sought. But it does effectively prevent "uncalled" meetings in which quorums of public bodies have secretly met, thrashed out the details, and then confined public action to cut and dried motions passed by an unreasonable unanimity.

Reasonably, this newspaper expects members of the same board to have conversation with each other on public matters of mutual interest. And we'd let the members go to a meeting in the same vehicle or confab with each other – with prosecution liable however, if the conversationalists began to approach the number required for a quorum.

Provisions are already written for meetings of public bodies to be public. What is needed is law to make sure all types are open–and for appropriate and effective remedies to be taken to keep them from being closed both name and in fact.

OCCA Office
1201 Court Street NE
Salem, Oregon
378-6000

March 12, 1973

POSITION OF THE OREGON COMMUNITY COLLEGE ASSOCIATION ON HOUSE BILL 2157

Mr. Chairman, members of the Joint Committee, my name is Betty Ekstrom. I am representing the Association position on this bill.

We are concerned with the language designed to protect "personal record privacy" as expressed in lines 26-28 on page 6. We believe the term "if the public disclosure thereof would constitute an unreasonable invasion of personal privacy" is subject to conflicting legal and court interpretation. If so, it is poor statutory language.

We believe that the existing language on student and faculty personal records in community colleges in lines 5 through 14 on page 16 which this bill now proposes to repeal is superior. The terms "except with the consent of the person who is the subject of the record" or "upon order of a court of competent jurisdiction" are difficult to misinterpret.

Under the current language students may request release of confidential transcripts including grade evaluations to assist in employment applications. However, they are also assured that the institution will not release such information indiscriminately.

Incidently, in preparing this testimony we originally planned to request that ORS 341.290 be inserted in line 6 of page 8 which would have exempted these community college records from the Act. However, we noted the reference on page 16 to ORS 192.030 which this bill repeals in line 27 on page 22.

Enclosed are copies of ORS 341.290 which is not exempted and ORS 351.065 which is exempted even though it also contains reference to ORS 192.030. You may wish to have the committee assistant check other statutes listed in lines 5-7 of page 8 to see if they also include reference to statutes in Chapter 192 being repealed.

We request that the Committee retain the language on page 16 which this bill now proposes to repeal or that the language on page 6 (lines 26-28) be improved along these lines.

any applicable rules and regulations of the State Board of Education, the board may:

(1) Subject to ORS chapter 237, employ administrative officers, professional personnel and other employes, define their duties, terms and conditions of employment and prescribe compensation therefor.

(2) Enact rules for the government of the community college, including professional personnel and other employes thereof and students therein.

(3) Prescribe the educational program.

(4) Control use of and access to the grounds, buildings, books, equipment and other property of the district.

(5) Acquire, receive, hold control, convey, sell, manage, operate, lease, lease-purchase, lend, invest, improve and develop any and all property of whatever nature given to or appropriated for the use, support or benefit of any activity under the control of the board, according to the terms and conditions of such gift or appropriation.

(6) Purchase real property upon a contractual basis when the period of time allowed for payment under the contract does not exceed five years.

(7) Subject to ORS chapter 279, purchase relocatable classrooms and other relocatable structures in instalment transactions in which deferred instalments of the purchase price are payable over not more than 10 years from the date such property is delivered to the district for occupancy and are secured by a security interest in such property. Such transactions may take the form of, but are not limited to, lease-purchase agreements.

(8) Establish, lease for not more than 10 years with or without an option to purchase, operate, equip and maintain food service facilities, bookstores and other revenue producing facilities connected with the operation of the community college.

(9) Fix standards of admission to the community college, prescribe and collect tuition for admission to the community college, including fixing different tuition rates for students who reside in the district, students who do not reside in the district but are residents of the state and students who do not reside in the state.

(10) Prescribe and collect fees and expend funds so raised for special programs and services for the students and for programs for the cultural and physical development of the students.

(11) Provide and disseminate to the public information relating to the program, operation and finances of the community college.

(12) Establish or contract for advisory and consultant services.

(13) Take, hold and dispose of mortgages on real and personal property acquired by way of gift or arising out of transactions entered into in accordance with the powers, duties and authority of the board and institute, maintain and participate in suits and actions and other judicial proceedings in the name of the district for the foreclosure of such mortgages.

(14) Maintain programs, services and facilities, and, in connection therewith, cooperate and enter into agreements with any person or public or private agency.

(15) Provide student services including health, guidance, counseling and placement services, and contract therefor.

(16) Join appropriate associations and pay any required dues therefor from resources of the district.

(17) Apply for federal funds and accept and enter into any contracts or agreements for the receipt of such funds from the Federal Government or its agencies for educational purposes.

(18) Exercise any other power, duty or responsibility necessary to carry out the functions under this section or required by law.

(19) Prescribe rules for the use and access to public records of the district that are consistent with ORS 192.030. However, the following records shall not be made available to public inspection for any purpose except with the consent of the person who is the subject of the record, student or faculty, or upon order of a court of competent jurisdiction:

(a) Student records relating to matters such as grades, conduct, personal and academic evaluations, results of psychometric testing, disciplinary actions, if any, and other personal matters.

(b) Faculty records relating to matters such as conduct, personal and academic evaluations, disciplinary actions, if any, and other personal matters.

[1971 c.513 §4]

341.295 [Formerly 341.890; repealed by 1971 c.513 §100]

**341.300 Traffic control.** (1) The board may adopt such regulations as it considers necessary to provide for the policing, control

all of the powers, duties and authority given to the State Board of Higher Education by this section, ORS 351.070 and 351.150.
[Amended by 1959 c.570 §1]

351.065 Access to and control of personal records. (1) The State Board of Higher Education may, for each institution, division and department under its control promulgate regulations authorizing issuance of rules and specific orders by or through the institutional executive of each institution governing access to personal records of the institution, division or department, which are less than 25 years old.

(2) Regulations adopted under subsection (1) of this section shall require that personal records be subjected to restrictions on access unless upon a finding by the institutional executive that the public interest in maintaining individual rights to privacy in an adequate educational environment would not suffer by disclosure of such personal record. Access to personal records may be limited to designated classes of information or persons, or to stated times and conditions, or to both, but cannot be limited for records of academic achievement or for records more than 25 years old.

(3) No regulation, rule or order promulgated pursuant to this section limits the authority of the institution, division or department to prepare, without identification of individual persons who have not consented thereto, statistical or demographic reports from personal records.

(4) Any category of personal record specifically designated as confidential pursuant to valid regulations, rules or orders pursuant to this section shall not be deemed a public record for the purposes of ORS 192.030.

(5) As used in this section, "personal records" means records containing information kept by the institution, division or department concerning a student or faculty member and furnished by him or by others about him at his or at the institution, division or department's request, including, but not limited to, information concerning discipline, counseling, membership activity, employment performance or other behavioral records of individual persons.
[1971 c.566 §1]

351.070 Board's general powers as to higher education and institutions. (1) The State Board of Higher Education may, for each institution under its control:

(a) Appoint and employ a president and the requisite number of professors, teachers and employes, and prescribe their compensation and tenure of office or employment.

(b) Demand and receive the interest mentioned in ORS 352.510 and all sums due and accruing to the institutions of higher education for admission and tuition therein, and apply the same, or so much thereof as is necessary, to the payment of the compensation referred to in paragraph (a) of this subsection and the other current expenses of the institutions.

(c) Prescribe fees for admission into such institutions, to be applied to the payment of tuition for instruction therein and incidental expenses deemed necessary to carry out the educational program authorized by the board.

(d) Collect additional fees, authorized by the institution executive, for student activities not included in the educational program referred to in paragraph (c) of this subsection. The payment of such fees shall be at the option and selection of the student and shall not be a prerequisite of enrollment.

(e) Confer, on the recommendation of the faculty of any such institution, such degrees as usually are conferred by such institutions, or as they deem appropriate.

(f) Prescribe the qualifications for admission into such institutions.

(2) The State Board of Higher Education may, for each institution, division and department under its control:

(a) Supervise the general course of instruction therein, and the research, extension, educational and other activities thereof.

(b) Enact rules and bylaws for the government thereof, including the faculty, teachers, students and employes therein.

(c) Maintain cultural and physical development services and facilities therefor and, in connection therewith, may cooperate and enter into agreements with any person or governmental agency; and may provide student health services and contract therefor.

(d) Except as otherwise provided by law, prescribe and collect charges for services rendered to any person or entity.
[Amended by 1953 c.545 §2; 1971 c.375 §1; 1971 c.708 §9]

351.075 Chancellor of State Board of Higher Education; appointment; qualifications; compensation. (1) The State Board of Higher Education shall appoint a chief executive officer who shall be known as the Chancellor of the State Board of Higher Education

HB 2157 FOR
SB 15

3-12-73



My name is Sandra Diedrich. I live at Rte 1 Box 1004, Bandon, Oregon. I am presenting this statement in behalf of the Oregon Committee for Progress through Law especially in behalf of the Southwest Oregon CPL. I am the chairman of the Southwest Oregon CPL encompassing Coos, Curry, and Western Douglas Counties. This statement supports SB 15 in concept but identifies areas of concern which are conspicuous by omission from the proposed bill.

The devises employed by duly constituted "legislative bodies" to impede the public right to know are many in number: non-published meetings, irregular meeting times and places, abruptly cancelled meetings without notice of time or place of reconvention, indefinite adjourments, and special mealtime sessions. Of these, the meal related meetings and meetings held in business establishments whose primary clientele are affluent work a particular hardship on less affluent but just as concerned members of the constituency. People who do not have a great deal of money cannot, of course, afford the cash value of meals prior to or during the business meeting and are self-consciously reluctant to attend meetings held in such an atmosphere. Besides that, non-meal meetings held in such establishments tend to discourage lower income people who are socially uncomfortable because of dress standards and the unfamiliar "ground".

The devises differ; the intent varies, but the results are the same, i.e., the public suffers de facto loss of sovereignty and de facto exclusion from the public process. SB 15 in its present form provides remedies for such devises except for stating that public meetings ought to occur in such a place that is readily accessible to all sectors of the constituency regardless of socio-economic status. Regular business meetings of "legislative bodies" as well as special sessions except those dealing with sensitive personnel questions, ought to take place in public places where all members of the constituency have equal access. Every community has such places which were designed, built, or made available for such purposes. These places ought to be used to provide equal access.

While SB 15 is designed to enforce the right of the people to attend meetings, it stops there. It can be construed by the language of this bill that a person may attend a meeting but does not have the right to speak to the issues to be dealt with during the meeting. In contacts and conversations I have had with various private individuals and public officials since this legislation has been introduced, this point has been raised.

One arguement I have heard frequently is that conducting a business meeting with the public present and vocal is lengthy and painstaking. Such an arguement deserves to be placed in the same category as that of a teacher saying that a lesson would go much faster if only the students wouldn't ask so many questions. While I appreciate the neccessity to have an orderly process for the proper conduct of business, it seems of paramount urgency that the public has the right to speak to issues directly to those with whom authority has been delegated during the course of public decision making process. Officials, whether they be elected or appointed, are invested with public trust and the responsibility to safeguard that not with omniscience or omnipotence. They ought not to forget that the information which the public may bring to their attention may result in a more informed and more equitable decision.

I would, therefore, urge that provision be made in SB 15 for an orderly process by which a member of the public may obtain both the right to appear on the agenda of a meeting given reasonable constraint and the right to speak to an issue before that meeting also given reasonable constraint. An orderly filing of intent in both cases would satisfy and safeguard both the right of the public and the orderly conduct of business. If one merely wishes to attend a meeting, then the anonymity provided for in SB 15 is in order.

SB 15 is a long step forward in reaffirming the principles of participatory democracy and the sovereignty of the people as well as their right to know. However, let not the long step forward fall short of providing all of the people with equal access and the right to speak publicly to the issues.

3-12-73 HL 10
HB 2157
SB 15



Statement of C. W. Hastings, Jr.
c/o The Oregon Bank
P. O. Box 3066
Portland, Oregon 97208

IN OPPOSITION TO HOUSE BILL 2157
AND SENATE BILL 15

(The term "person" as used in this statement has the meaning assigned to it by Section 2 (3) of H.B. 2157)

I am in full agreement with minimizing secrecy in the conduct of public business.

However, H.B. 2157 is rather sweeping in its elimination of confidentiality in public records; and, I believe, will have the following undesirable effects if it becomes law:

1. Because of the uncertain nature of the protection provided for confidential personal and private business information, many persons not compelled to seek the services of State agencies will refrain from doing so.
2. Persons who are for any reasons required by law or circumstances to seek the services of, or report to, a public body will have no assurance that personal or private and confidential business information will be held in confidence.
3. Much of the information contained in the files of various public bodies, particularly regulatory and investigative bodies, will be of no real public interest but will be sought by competitors, opponents, information peddlers, rumor mongers and others, even criminals, looking for something that can be turned to personal advantage.
4. The records of some public agencies contain information on the income,

worth, family, and other private affairs of persons who are not public employees or office holders or in any way involved in the conduct of public business or the expenditure of public funds, as a recipient or otherwise. This information will be protected from exposure, perhaps to hostile eyes, only by someone's subjective determination of what is in the public interest.

I call attention specifically to the Banking Division of the Commerce Department. The files and records of this Division contain the names of many individuals and firms who are borrowers from state banks, and information concerning these borrower's financial affairs.

These files and records also contain information with respect to banks' alarms and security systems, cash and valuables storage facilities, internal operations, and insurance coverage.

They also contain information regarding private fiduciary accounts (personal and family trusts, etc.). Such information is entirely private, having to do with the personal and financial affairs of individuals and families. The Banking Division's records also contain information covering the business plans of banks - for growth, new services, and the like - to improve their respective abilities to compete.

Information of the kind above described (contained in bank examination reports and other reports and applications) is of no conceivable legitimate public interest; and could be the source of harm in the wrong hands.

The information regarding banks which is and should be of interest to the public - that concerning their financial strength and soundness - is widely available, and it is not necessary to open the files of the Banking Division to provide such information to the public.

The "Call Reports" submitted to both State and Federal banking authorities, on demand, four times each year on dates not announced in advance, are required to be published in full in publications of general circulation. Banks also make such information available to their stockholders, customers and anyone else who may be interested by means of quarterly and annual statements which are widely distributed.

I earnestly urge that H.B. 2157 be amended before passage to:

1. Provide clear, definite, full-time, mandatory protection for the confidentiality of the kinds of information mentioned in Section 11 of the Bill.

2. Include in the information protected by Section 11 at least the following:

   (a) The private, personal, and financial affairs of any person which are not otherwise required by law to be made public.

   (b) Security systems and storage facilities maintained by any person for the protection of money, other valuables, documents, plant and equipment, products and processes, or a home, against robbery, burglary, sabotage, industrial espionage, or other unauthorized intrusion.

   (c) Business plans which are not otherwise required by law to be the subject of public announcement or public hearings.

   (d) The nature and amount of insurance carried by any person against liability, robbery, burglary, theft, extortion, employee infidelity, valdalism and the like; and the amount of insurance upon the life of any person.

   (e) Material consisting of unconfirmed opinions, estimates, speculations, suspicions, guesses, or rumors as to the activities or condition of any

person or officer or employee of any person.

(f) The files and records of the Banking Division, except as to such matters as are already required by law or regulation to be publicized. (These files and records contain altogether too much information that is of no interest to the public, but would be of great interest to competitors, persons seeking private advantage, criminals, and others whose use of such information is much more likely to be adverse to the public interest than conducive to it).

Further, I believe and therefore recommend that both H.B. 2157 and S.B. 15 be amended at least to provide that meetings of regulatory boards and commissions at which information of the kind above mentioned will be discussed should be permitted to be closed to the public.

Again, my interest is primarily the State Banking Board. This Board discusses many things other than regulatory policy. At its meetings the Board may consider the financial or operational problems being encountered by a bank, or the investigation of a bank officer because of suspected incompetence or failure to comply with banking laws, or other matters of similar nature.

Such a problem can almost always be corrected with the guidance or, if necessary, the direct action, of the State or Federal regulatory authorities; but premature public disclosure of the problem can result in major, irreparable (and needless) harm to the bank involved, to the detriment of its depositors, other creditors, employees, stockholders and community.

I strongly urge that House Bill 2157 and Senate Bill 15 not be approved in their present forms.

C. W. Hastings, Jr.

3-12-73 ul HB 2157, SB 15

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OREGON STATE ARCHIVES

# DEPARTMENT OF REVENUE

STATE OFFICE BUILDING • • • SALEM, OREGON • • • 97310

TOM McCALL
GOVERNOR

C. H. MACK
Director

March 5, 1973

Honorable Jack D. Ripper
Oregon State Senate
314 State Capitol
Salem, Oregon 97310

Honorable Robert D. Ingalls
House of Representatives
18-C State Capitol
Salem, Oregon 97310

Gentlemen:

House Bill 2157 and Senate Bill 15

My purpose in writing this letter is to make some observations and hopefully provide constructive suggestions regarding the two public disclosure bills that your special committee on professional responsibility is considering.

The Attorney General previously submitted a draft of House Bill 2157 to me, and I am enclosing a copy of my comments to him. You will note I indicated that under the proposed bill, Oregon income tax returns would be fully protected so long as they were in the possession of the Department of Revenue but that when such information was revealed as allowed by law to agencies such as the Corporation Division and the Welfare Division, the confidentiality was lost.

In addition, the long-standing statutory provision, ORS 308.290, presently provides that personal property returns filed with the county assessor and records of property centrally assessed by the Department of Revenue are confidential, and should, in our opinion, be preserved in the interests of sound tax administration. The detailed reasons for preserving the confidential status of these types of records are set forth in the attached Interoffice Memo that was directed to me by the Administrator of the Department of Revenue's Assessment and Appraisal Division.

We would appreciate the opportunity to appear and testify at all future hearings concerning these bills so that we can provide any assistance you may desire for the complete understanding of our tax administration and how these bills may affect it.

Very truly yours,

C. H. Mack
Director

Enclosures 2

 

January 30, 1973

Honorable Lee Johnson
Attorney General
Department of Justice
100 State Office Building
Salem, OR 97310

Dear Mr. Johnson:

Responding to your letter of January 5, 1973, soliciting the Department of Revenue's comments regarding the Public's Right to Know bill, I am submitting the following observations.

Basically, the provisions in Section 11 (1)(m) of the bill preserve the secrecy provisions of income tax returns that are in the Department of Revenue's possession. However, various statutes do authorize the Department of Revenue to make certain tax information available to other agencies, and it is in these agencies' possession that certain tax information would no longer be confidential under the contemplated bill.

If this confidential status of income tax returns is to remain, then ORS 57.850 which authorizes the Department to make available to the Corporation Commissioner certain tax data, ORS 416.230 which authorizes information to be available to the Public Welfare Division, and ORS 418.135 which authorizes information to be furnished to the Public Welfare Division and the Welfare Recovery Division, should be included in the statutory references excepted under paragraph (m).

Another important tax subject which would lose its statutory confidential status would be the personal property tax returns that are presently considered as confidential records by ORS 308.290(5).

Finally, under ORS 314.840 the Department of Revenue does make available to the Governor such tax information as he requests. Whether such information in the hands of the Governor then loses its confidential

status may be a question which you would want to determine. Similarly, the information which the Secretary of State obtains in the course of performing his duties as auditor of public accounts, including those of the Department, includes information which while in the Department's possession is considered as confidential under ORS 314.835, but which may be a "public" record while in the Secretary of State's hands.

In summary, under the proposed bill, the tax records of the Department are confidential while in its possession, but when made available to various other agencies, such status would seemingly be lost. In addition, the present protection for personal property tax returns would no longer exist.

Sincerely,

C. H. Mack
Director

STATE OF OREGON
DEPARTMENT OF REVENUE
Assessment & Appraisal Division

INTEROFFICE MEMO

C. H. Mack
Director

DATE: February 23, 1973

FROM: D. M. Fisher
Administrator



SUBJECT: "Public Right to Know" Bill - HB 2157

Your January 30, 1973, letter to Attorney General Lee Johnson briefly discussed the need for additional amendments to perpetuate certain disclosure practices, particularly in the income tax area.

After considerable thought and some discussion with county assessors, it is my recommendation that certain appraisal data be classified confidential except to the owner of the property. The personal property return and the real property return are confidential by statute. In the printed Bill, ORS 308.290 is not included in Section 11(m). Under the Bill, data received by the appraiser in confidence supposedly would enjoy this classification.

The real property assessment roll and the personal property assessment roll are a public record by statute. This should, of course, continue. But inventory and appraisal data that support the values on the assessment roll should be available only to the owner of the property. Illustrations and arguments supporting this position include:

(1) Appraisal records of commercial and industrial properties in the assessor's office frequently contain income data obtained in confidence. The appraisal will include valuation estimates using the income approach. Such income data should not be made available to the public; and if it is, the assessor's own ability to obtain it will become impossible in the future.

(2) Appraisals of industrial and utility properties invariably include data excerpted from reports that are confidential by statute. To segregate data on work sheets and in appraisals as to what is confidential and what is not would be impossible to do. (The Bill provides such a segregation is to be made.) It would be meaningless to extract income data from a work sheet and have any substance left.

(3) Appraisals frequently include descriptions of and quantities of production. These are guarded trade secrets and should not be divulged. To keep such items segregated from the appraisal would be very difficult to accomplish administratively.

(4) Residential appraisals are now being encountered that include details of burglar alarm systems. Making this data available to the public is not desirable. Many commercial properties already have them.

(5) Persons interested in knowing timber volumes cruised by the Department of Revenue seek out this information which shows species and grade. Most frequently, inquiries are from gypo loggers or those seeking to put together isolated tracts of timber. With such information, they prey upon the uninformed owner.

(6) Realtors and fee appraisers copy data off appraisal cards to facilitate their way of making a livelihood. A city manager is reported to have made veteran loan appraisals in this manner.

(7) The use and misuse of appraisal records cause a large expense of administration in the assessor's office where individuals must be waited on and watched. People have been known to walk off with the entire appraisal card and jacket.

(8) In developing the value of timber stumpage, manufacturing costs and logging costs are obtained to back the value of lumber or plywood into the value of standing timber. All these cost data are very important to the appraisal work, but would be lost in the future if it were to be public information.

(9) Again, in the timber area of appraisal, log value data will not be released by certain companies without a subpoena. Companies are so sensitive about releasing their cost data that they demand a subpoena be served. This kind of data should not then be converted to public use.

DMF:ep

cc: J. J. Lobdell
T. W. de Looze

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CABLE ADDRESS: "CARRIAGE"
TELEPHONE (503) 226-1191

March 7, 1973

The Honorable Jack D. Ripper
The Honorable Robert C. Ingals
Co-Chairmen, Joint Committee on
Professional Responsibility
Legislative Assembly
of the State of Oregon
Salem, Oregon

Re: Senate Bill 15

Gentlemen:

Enclosed please find copies for each committee member of my statement on Senate Bill 15.

Very truly yours,

Daniel H. Skerritt

Daniel H. Skerritt

DHS:rk
Enclosures

Pacific Communities Hospital

721 SOUTHWEST NINTH STREET • TELEPHONE 265-2244 • NEWPORT, OREGON 97365

February 21, 1973

Oregon State Senate
Honorable Jack Ripper, Chairman
Professional Responsibility Joint Committee
Salem, Oregon

Re: Senate Bill 15

Dear Senator Ripper:

Your further analysis and negative vote for above bill to provide that all public facilities must advertise and open to the public all meetings of their Boards, Trustees, and committees is urged, unless: 1) Hospitals can be entirely excluded or 2) and hospital meetings dealing with personal or delicate medical affairs can be excluded.

Please give the above exclusions your utmost consideration.

Yours truly,

Lila Skriver

Lila Skriver
Administrator

cc: Honorable Stan Ouderkirk
State Senate
Salem, Oregon

Thanks
your opinion will be taken under
consideration on this bill as it is
heard in Comm.

Grace Thill
c/o The World
Box 779
Coos Bay, Ore. 97420

Jack:

Can you have a copy of Senate Bill 15 sent to me? Several boards of directors that I cover have indicated dissatisfaction if not downright disapproval of this bill to prohibit secret meetings and I would like to study it to see if their fears are well founded.

Their greatest disapproval seems to come through a similar law in California which, they say, prohibits a couple of friends serving on the same board even to have coffee together or stand on a street corner talking. It seems to me from news releases that SB 15 speaks to meetings at which decisions are made, etc., which certainly would not cover such situations--but one of the directors involved is an attorney and I may be looking at it as a layman.

Thanks for any help you can give me. Hang tight for property tax reform and do what you think best. We can afford more income taxes while earning incomes as opposed to high property taxes when we retire.

Appreciatively,

Grace Thill

HOUSE RESEARCH
ROOM 411B
STATE CAPITOL BUILDING
SALEM, OREGON 97310



COORDINATOR:
IAIN E. MORE
TELEPHONE 378-8871

HOUSE OF REPRESENTATIVES
SALEM, OREGON
97310

February 7, 1973

To: Rep. Ingalls
Sen. Ripper

From: Grattan Kerans

Subject: Staff research on Shield Law

I prepared the attached comparison chart of the four Shield Bills now before the committee, so that you and the committee members might better see the differences between them. The chart should prove to be of some help during the work session on the bills.

In addition, I am preparing composite bills in each category--qualified and unqualified--simply as foundations for discussion by the committee. I will draw material for the composite qualified bill from H.B. 2104, S.B. 32 and S.B. 97, and the qualified shield laws of other states. I'll do the same for S.B. 206.

Also, I will give you explanations and arguements on each of the six criteria listed on the chart, in relation to the composite bills. I will do my best to keep this as short and precise as possible.

I should have the composite bills, and the companion notes, ready for you in enough time that you and the committee members can study them. I'm shooting for Friday afternoon, but it may be Monday morning.

If there are any addition or subtractions you want to make from this work, let me know and I'll get on them.

2/7/73 Prepared by Grattan Kearns, Administrative Assistant

| | H.B. 2104 | S.B. 32 | S.B. 97 | S.B. 206 |
|---|---|---|---|---|
| I. QUALIFICATIONS | 1. Threat to human life.<br>2. Compelling and overriding state interest. | 1. Information from a proceeding, required to be kept secret.<br>2. Threat to human life.<br>3. Foreign aggression. | 1. Probable cause to believe person has information relevant to specific probable violation of law.<br>2. Information cannot be obtained from person not protected.<br>3. Compelling state interest. | None. |
| II. PROTECTION | 1. Any information.<br>2. Source of any information.<br><br>"...procured by him for publication or broadcast." | 1. Any information.<br>2. Source of any information.<br><br>"...obtained by him or disclosed to him in his capacity as a newsman." | 1. Any information.<br>2. Source of any information.<br><br>"...procured for publication or broadcast ...obtain or evaluate any information, or source of information...." | 1. Any unpublished information.<br>2. Source of any information. |
| III. COVERAGE | A person employed by the news media or press, or a person engaged in the independent gathering of information for publication or broadcast. | A newsman regularly engaged by a newspaper, periodical, press association or radio or television station. | A person connected with or employed by the news media or press, or who is independently engaged in gathering information for publication or broadcast. | No person. Medium of communication includes, but is not limited to, any newspaper, magazine or other periodical, book, pamphlet, news service, wire service, news or feature syndicate, broadcast station or network, or cable television system. |
| IV. LENGTH OF COVERAGE | No coverage after termination. | Not covered after termination. | Covered after termination of employment, or independent engagement in gathering of information. | Covered after termination of employment, or independent engagement in gathering of information. |
| V. DIVESTING PROCESS | 1. Apply to circuit court.<br>2. Appealable.<br>3. Subject to stay. | 1. Consent of informant. | 1. Apply to circuit court.<br><br>No appeal or stay included. | Not applicable. |
| VI. PROOF | "...if the court...determines that there is clear and convincing evidence that the disclosure is required...." | No provision for proof. | "...if the court...determines that the person seeking the disclosure has shown by clear and convincing evidence...." | Not applicable. |

3/..4/73 H

# Oregonians support shield law for newsmen

By J. ROY BARDSLEY

The news reporter's source of information should be protected to guarantee a free flow of information.

This was the verdict handed down by the Oregon public, which was quizzed last week on the shield law pending before the Legislature.

The victory margin for the shield law was better than three-to-one, with every sector of the state agreeing that reporters should be granted immunity in disclosure cases.

Last summer, the Supreme Court ruled that newsmen have no constitutional right to withhold sources of information in governmental and judicial cases.

But now, Oregon and most other western states are considering legislation to protect the confidentiality of news sources.

Since the issue affects the news audience, the following question was presented to a cross-section of Oregonians by Bardsley & Haslacher, Inc., an independent and impartial research organization.

"Do you believe the news reporters should or should not have the right to refuse to identify their sources of information?"

| | Per Cent |
|---|---|
| Right to refuse | 71 |
| No right to refuse | 22 |
| Undecided | 7 |
| | 100 |

Support for the protective shield was pervasive, crossing all population lines and extending into every section of the state.

There were, however, some variations in support patterns. Democrats, for example, were stronger supporters of reporters' rights than Republicans.

Geographically, support for the shield concept ranged from 81 per cent in Eastern Oregon to 64 per cent in southern-central areas of the state.

These and other breakdowns are shown below: (Read across)

| | Right to Refuse | No Right | Undecided |
|---|---|---|---|
| Democrats | 76 | 20 | 4 |
| Republicans | 66 | 24 | 10 |
| Not registered | 71 | 23 | 6 |
| Metro Portland | 73 | 22 | 5 |
| Coastal areas | 73 | 23 | 4 |
| So.-central areas | 64 | 28 | 8 |
| Willamette Valley | 69 | 21 | 10 |
| Eastern Oregon | 81 | 14 | 5 |
| 18 - 29 yrs. of age | 76 | 21 | 3 |
| 30 - 49 | 68 | 24 | 8 |
| 50 yrs. or over | 70 | 21 | 9 |

While there was general unanimity, some stated voluntarily that the circumstance should dictate the decision, citing exceptions such as a national crisis or felonious crime.

These findings are based on 800 personal interviews, which are sufficient to yield results within 3.6 per cent of those which would be produced by a complete census of Oregon adults.

Oregonian poll

# Open-meeting law solidly supported

By ROY BARDSLEY

Oregon voters solidly support legislation which would require governmental bodies to open their meetings and make their records available to the public.

"We pay the taxes, we have a right to know what's going on."

"This would make politicians accountable for their actions and mean more efficiency and honesty in government."

"It would generate citizen involvement in government matters, which is what democracy is all about."

These are some of the reasons why better than four out of every five Oregonians favor passage of "open" meeting and record laws.

Here is the question which produced this evidence:

"The Oregon Legislature is now considering bills which would require that all public bodies open their meetings and make their records available to the public. Do you generally agree or disagree with these bills?"

| | |
|---|---|
| Agree | 82% |
| Disagree | 15% |
| Undecided | 3% |
| | 100% |

Not only was there unanimity on the issue, but there was very little range of opinion between population groups.

Men and women, for example, "voted" almost identically on the bills, as did Metro Portland and the remainder of the state.

As usual, however, there was some difference between political parties, with more Democrats subscribing to public access laws than Republicans.

The only other variation of note was found among young people, who feel more strongly than their elders that the public has a right to know "what gives with government."

Opinion patterns follow. (Please read across)

Favor Public Access Laws

| | Yes | No | Undecided |
|---|---|---|---|
| | % | % | % |
| Democrats | 85 | 13 | 2 |
| Republicans | 79 | 18 | 3 |
| 18-29 years of age | 87 | 12 | 1 |
| 30-39 | 82 | 16 | 1 |
| 40-49 | 81 | 15 | 4 |
| 50-59 | 79 | 18 | 3 |
| 60 or over | 80 | 14 | 6 |
| Men | 82 | 15 | 3 |
| Women | 83 | 14 | 3 |
| Metro Portland | 82 | 16 | 2 |
| Remainder of state | 83 | 13 | 4 |

This poll is a reader interest feature of The Oregonian and was conducted by Bardsley & Haslacher, Inc., a private research organization. Sample for the study consisted of 800 personal interviews, constituting a cross section of the Oregon public.

# PUBLIC EMPLOYE RELATIONS BOARD

430 SUMMER STREET N.E. • SALEM, OREGON • 97310 • Phone 378-3807

TOM McCALL
GOVERNOR

MEMBERS
WM. F. LUBERSKY
Chairman
J. W. FORRESTER, JR.
PAUL T. BAILEY

MELVIN H. CLEVELAND
Executive Secretary

March 14, 1973

Senator Jack D. Ripper, Co-Chairman
Representative Robert C. Ingalls, Co-Chairman
Professional Responsibility Committee
Capitol Building
Salem, Oregon 97310

Re: Second Amended Draft of S.B. 15

Gentlemen:

I am writing to you with regard to Section 9 of the second amended draft.

Section 9 (1) and 9 (1)(c) provide that labor negotiations and matters directly related thereto may be carried out in executive session upon two-thirds vote of the members of the governing body. I understand that there has been some discussion before your committee suggesting that labor negotiations could be carried out at a public meeting.

I respectfully suggest that labor negotiations be closed to the public unless both the governing body and the labor organization agree to their being public. The parties meet as equals at the bargaining table and normally the times, places and procedures that will be followed in conducting the negotiations are the first matters agreed upon. A unilateral decision that the negotiations would be public could cause an unfortunate labor dispute.

The governing body should be permitted to give its instructions to its negotiator or negotiating team while in executive session. The governing body probably could ratify or adopt in public meeting the agreement reached by the bargaining teams. The negotiation process itself normally is not even a "meeting" as that term is defined in the bill. Typically, a sub-committee of the governing body, its administrative officer or a professional negotiator speaks for the governing body at the bargaining table.

I personally feel that it would be a mistake to require that labor negotiations be carried out at a public meeting. Successful negotiations involve serious give and take with the parties frequently caucusing to re-examine their positions and often recessing to go to the parties they represent for instructions.

Mediation is a part of the labor negotiation process. The mediator meets with both sides and attempts to assist them in reaching agreement. Skilled in labor relations and conflict resolution, he suggests alternatives, modifications and provides additional factual data and hopefully leads the parties to the area in which final settlement is likely. Our mediators have had substantial experience and considerable success in helping settle bargaining impasses. They do not feel that it would be possible to successfully mediate disputes at public meetings. Typically, in mediation the two sides are not even meeting together. The mediator is meeting with one side and then the other, talking with them in confidence.

In summary, in the interest of maintaining labor peace, I urge that you provide that labor negotiations are not a "meeting" as the term is defined in the bill.

Sincerely,

Melvin H. Cleveland

Melvin H. Cleveland
Executive Secretary

MHC/1

cc: Senator Wallace P. Carson, Jr.
Senator Edward N. Fadeley
Senator Tom Hartung
Senator Fred W. Heard
Representative Ed Lindquist
Representative George F. Cole
Representative Margaret V. Dereli
Representative Norma Paulus

The Oregonian
ESTABLISHED 1850
DAILY AND SUNDAY PORTLAND, OREGON 97201

3-19-73 file 1
HB 2157
SB 15



MAR 7 1973

Tuesday, March 6, 1973

Rep. Robert C. Ingalls
Chairman, Joint Committee on Professional Responsibility
State Capital
Salem 97310

P.R

Dear Sir:

I left last night's hearing on the so-called open meeting bill somewhat concerned that the members of your committee seemed receptive to the amended version of S.B.15, including its several loopholes. I am especially concerned that the committee will too readily accept the word of the OSBA and other witnesses that there is a need for closed meetings to discuss real property purchases and labor negotiations. As I said in my testimony last night, I concede the right of an employe to call for an executive session of a government body which is hearing charges against him. But the clauses pertaining to property purchases and labor negotiations were added after I had prepared my remarks, and I'm afraid I didn't adequately represent my objections to them.

On paper, the property and bargaining clauses seem reasonable. It sounds unfair, for instance, to make the school board conduct its bargaining strategy sessions in public while the teacher representatives huddle privately. But realistically, that is not what would happen. I have covered two negotiating go-rounds between Portland teachers and the Portland School Board, and have never heard anything in the executive sessions of the school board pertaining to labor talks which could not have been said under a strict open meeting law. The reason is that the board delegates a bargaining team, usually a board member and a member of the district personnel staff, and allows them considerable latitude in the bargaining. At the outset of negotiations, the board briefs the bargaining team, but the content of that briefing is nothing an astute labor team could not anticipate on its own: For instance, the board will remind the negotiators of the (public) fact that it is not going to seek a levy outside the six per cent limitation, or that it is opposed to putting non-economic items into contract language. The negotiating team then proceeds to bargain with considerable latitude, consulting school district staff for whatever economic information it needs and meeting periodically with the rest of the school board, not so much for strategy, but to keep them briefed on progress in the talks. Towards the end of the bargaining, the negotiating team might call up a few board members and say, "We can get an agreement if we go one-tenth of a per cent higher on the wages and add $10,000 to the health and welfare trust fund. If we shake on it, will the board ratify the agreement?" The two negotiating teams eventually reach an accord (both complaining that they have given their right arms to preserve the peace) and both must take the

contract back to their constituencies for ratification, the district team to the board, the teacher team to a mass vote of teachers. I fail to see how a requirement that open meetings include labor sessions would put either side at a disadvantage.

Much the same is true in real property purchases. In the past year I have watched the school district acquire a large piece of property, inch by inch, in the Memorial Coliseum area. It has been common knowledge since early in the project that the district intended to accumulate the property for a central warehouse facility. Decisions made with regard to that major purchase were not made by the school board, but they were made by properties staff and endorsed by the school board. The board is still acquring bits of property in that area, but they have had no recent discussions of that property. They vote on each purchase, as it comes up, in a public session. As for property owners jacking up prices when they learn a public body is planning a major land acquisition, let's not forget that a plan for land acquisition by a public body usually leaks out one way or another. Usually it is not the small land owner who gets the news in time to make a profit, but the speculator with friends who can tip him off. And it seems to me ridiculous to say that a public body which has the power of condemnation is at a disadvantage in the acquisition of property just because that acquisition has to be out in the open.

I think public agencies can live with open meetings on the subjects of real property purchases and labor negotiations. And I think the small inconvenience such a law may impose on them is a low price to pay for the principle that the public's business belongs right out front. The amendments to S.B. 15 are loopholes which any arrogant public body can stretch to suit its imagination, and I hope you will strengthen that amended bill by striking out Section 8, (1) (c) and (d).

Sincerely,

Bill Keller

Bill Keller

HB 2157
SB 15

12



# EXECUTIVE DEPARTMENT

240 COTTAGE STREET S.E. • • • • SALEM, OREGON 97310

TOM McCALL
GOVERNOR

CLEIGHTON PENWELL
Director

March 19, 1973

The Honorable Jack D. Ripper, Co-Chairman
The Honorable Robert C. Ingalls, Co-Chairman
Professional Responsibility Committee
Capitol Building
Salem, Oregon 97310

Gentlemen:

Re: Senate Bill 15
Second Amended Draft

The Executive Department is concerned about Section 9 of the second amended draft of Senate Bill 15, as it applies to public employe collective bargaining.

We firmly believe that the public has a right to be informed of the deliberations of a public body which could result in official action being initiated. Government conducted under a veil of secrecy is antithetical to the fundamental concepts of a democratic society.

We are strongly opposed, however, to any statutory provision which would burden free and uninhibited exchanges of collective bargaining. The very nature of collective bargaining requires that the parties be free from outside influences and pressures, which would result if bargaining were to occur in public meetings. Instead of negotiators directing their efforts and energies towards a resolution of the problems, negotiators would be concentrating their efforts on the making of a public record.

A collective bargaining session is not a model of the traditional public meeting. Histrionics, heated exchanges, outrageous demands and responses, and oft-times seemingly irrelevant and meaningless discussions are common to the bargaining process. The employer and the representative of its employes are engaged in a process of exchange and analysis of proposals and counterproposals. Official action is never taken on the major portion of the preliminary discussions and maneuverings that take place at the bargaining table.

If this state is to accept the concept of collective bargaining between public employes and public employers, it should not establish procedures which would make the process meaningless and futile. Requiring labor negotiations to be conducted in public would cause the parties to assume rigid positions and inflexible attitudes. True collective bargaining requires full freedom of expression and exchange of ideas. The Oregon Public Employe Relations Board in a decision dated June 14, 1972 expressed the commonly-accepted definition of good faith bargaining clearly and concisely.

> *While the concept of good faith bargaining is a difficult one to define, it has been generally agreed that it includes an approach and an attitude towards negotiations indicative of a willingness to discuss the claims of both parties fully and freely and, when one party is opposed to the claims of the other, that he be willing to justify that opposition on the basis of reasoning.*
> *(PERB C-70, June 14, 1972)*

Unless negotiations are conducted in secret, they are not true good-faith negotiations, but merely become monologues for the press and a medium for propaganda. The National Labor Relations Board has long held that the presence of a stenographer at a collective bargaining session has an inhibiting effect which discourages freedom of exchange. Labor negotiations held open to the public would suffer from the same constraints.

The individuals bargaining on behalf of the Public Employer are not trying to hide anything from the public. They are merely trying to get the best possible settlement, and should not be placed at a disadvantage in this effort. The Florida Supreme Court, in a recent decision concerning the application of that state's open meeting law to Labor negotiations said:

> *The public's representative must be afforded at least an equal position with that enjoyed by those with whom they deal. The public should not suffer a handicap at the expense of a purist view of open public meetings, so long as the ultimate debate and decisions are public and "the official acts" and "formal action" specified by the statute are taken in open "public meetings" this affords the adequate and effective protection to the public on the side of the "right to know" which was intended.*
> *(Bassett vs. Braddock, 262 So2d 425, 427)*

Public access to labor negotiations would invite attendance by partisan supporters, rather than the general public. The bargaining session could easily turn into a three-ring circus, further dividing

the parties as each side strives to maintain its position for the benefit of the public rather than seek means of compromise.

The Executive Department feels that if collective bargaining is to be accepted in the public sector and if the public employer if to be effective in his responsibilities to the public under the provisions of labor negotiations, he must meet the employe representative on equal terms and equal footing. Such would not be the case if the negotiations were conducted in open forum, with the public having access to the preliminary discussion leading up to the final settlement.

The public right to know would still be protected in that the final results of the negotiation process are subject to careful public scrutiny and press, radio and television coverage. But the process itself, leading up to the final agreement, must be free from outside influences. It must take place in an atmosphere which encourages a full and complete discussion and exchange of ideas, proposals and arguments. Open public meetings would discourage and inhibit such exchange.

Sincerely,

Cleighton Penwell
Director

CP:Rn

S.B. 15, as amended by the Joint Special Committee on Professional Responsibility.



Also including amendments written by Legislative Council, and Grattan, concerning civil penalties in Section 9, and other language and style problems.

SB 15
John Olin, Banking
Chris Dudley, OSBA
Lee Johnson, AG

A BILL FOR

AN ACT

Relating to public meetings; and requiring penalties.

Be It Enacted by the People of the State of Oregon:

Section 1. It is the intent of this Act that the [~~actions~~] decisions of public bodies be taken openly and that their deliberations be conducted openly.

Section 2. As used in this Act:

(1) "Decision" means any determination, action, vote or final disposition upon a motion, proposal, resolution, order, ordinance or measure [~~by~~] on which a majority vote of a governing body is required, at any meeting at which a quorum is present.

(2) "Executive session" means any meeting or part of a meeting of a governing body which is closed to certain persons for consideration of certain matters.

(3) "Governing body" means the members of any public body consisting of two or more members with the authority to make decisions or recommendations on policy or administration for or to a public body.

(4) "Public body" means the state, any county, city or district, or any municipal or public corporation, or any board, department, commission, council, bureau, committee or subcommittee or advisory group or any other agency thereof.

(5) "Matter" means any subject, business, issue, proposal, concern, action or measure to which consideration is given by a public body.

(6) "Meeting" means the convening of [~~a quorum of~~] a governing body of a public body for which a quorum is required in order to [~~for the purpose of making~~] make a decision or consider [~~considering~~] any matter.

Section 3. (1) All meetings of the governing body of a public body shall be open to the public and all person shall be permitted to attend any meeting [~~of the governing body of a public body~~] except as otherwise provided by this Act.

(2) No quorum of a governing body shall meet in private for the purpose of deciding on or considering any [~~public business~~] matter.

(3) A governing body of a public body shall not hold a meeting at any place where discrimination on the basis of race, creed, color, sex or national origin is practiced.

Section 4. The governing body of a public body shall provide, by ordinance, resolution, bylaws or by whatever rule is required for the conduct of business, the time and place for holding regular meetings. Every governing body shall give notice to the public, reasonable designed to give actual notice to all interested person, of the time and place of meetings at which it will transact public business. In the case of any emergency meeting or meeting held on necessarily short notice, such notice shall be appropriate to the circumstances. No special meeting shall be held without at least 24 hours notice to the members of the governing body and to the general public.

Section 5. (1) The governing body shall provide for the taking of minutes of all its meetings, including executive sessions.

Neither a full transcript nor a recording of the meeting is required, except as otherwise provided by law, but the minutes must give a true reflection of the [~~business of~~] matters discussed at the meeting and the views of the participants. All minutes shall be available to the public within a reasonable time after the meeting, and shall include at least the following information:

(a) All members of the governing body present;

(b) All motions, proposals, [~~and~~] resolutions, orders, ordinances and measures proposed and their disposition;

(c) The results of all votes, and upon the request of a member, the vote of each member, by name;

(d) The substance of any [~~arguement~~] discussion on any matter.

Section 6. (1) Nothing contained in this Act shall be construed to prevent the governing body of a public body from holding executive session during a regular or special meeting, after the presiding officer has identified the [~~section and subsection~~] authorization under this Act [~~authorizing~~] for the holding of such executive session. Executive session may be held:

(a) To consider the employment, dismissal or disiplining of a public officer, employe, staff member or individual agent, if such officer, employe, staff member or individual agent requests [~~a closed hearing~~] an executive session. This paragraph does not apply to the filling of a vacancy in an elective office.

(b) To hear complaints or charges brought against such public officer, employe, staff member or individual agent by another public officer, [~~person or~~] employe or person, if such officer, employe,

staff member or individual agent against whom such complaint or charge is brought requests [~~a closed hearing~~] an executive session.

(2) Nothing contained in this Act shall be construced to prevent, upon a two-thirds majority vote of the members, the governing body of a public body from holding executive session during a regular or special meeting, after the presiding officer has identified the [~~section and subsection~~] authorization under this Act [~~authorizing~~] for the holding of such executive session. Executive session may be held:

(a) To conduct deliberations concerning the authority of persons designated by the governing body to carry on labor negotiations, or to negotiate the purchase of real property.

(b) To consider records that are exempt by law from public inspection.

(c) To consider preliminary negotiations involving matters of trade or commerce in which the governing body is in competition with governing bodies in other states or nations.

(3) Representatives of the news media shall be allowed to attend executive sessions under such conditions governing the disclosure of information as shall be agreed to by the governing body and the representatives of the news media.

(4) No executive session authorized by this section shall be held unless the governing body has first been convened in a meeting for which notice has been given, as provided for in section 4 of this Act, and, prior to the vote of the members on the question of holding such executive session, as provided for in this section, the presiding officer has first identified the section

and subsection under this Act authorizing the holding of such executive session.

(5) No executive session may be held for the purpose of taking any final action or making any final decision.

Section 7. No meeting of a governing body of a public body shall be held [~~through the use~~] by means of electronic communications, including, but not limited to, telephone or radio, or [~~the~~] by means of mail.

Section 8. Any [~~interested~~] person affected by a decision of a governing body of a public body may commence a suit in the circuit court for the county in which [~~a~~] the governing body ordinarily meets, for the purpose of requiring compliance with, or the prevention of violations or threatened violations of this Act, by members of the governing body, [~~of a public body~~] or to determine the applicability of this Act to matters or decisions or threatened decisions of the governing body. The court may order such equitable relief as it deems appropriate in the circumstances. The court may order payment to a successful plaintiff in a suit brought under this section of his reasonable attorney fees, by the governing body, or public body of which it is a part or to which it reports.

Section 9. Each member of the governing body of a public body found in a suit brought under this section to have attended a meeting or executive session of such governing body where matters are considered or decisions are made in violation of any provision of this Act, with knowledge of the fact that the meeting or executive session is in violation thereof, may be ordered by the

court to make payment for the benefit of the state of a civil penalty not to exceed $1,000.

Section 10. The provisions of this Act shall not apply to the deliberations of the State Board of Parole and Probation, the Judicial Fitness Commission, of state agencies conducting hearings on contested cases in accordance with the provisions of ORS chapter 183, the review by the Workmen's Compensation Board of similar hearings on contested cases, or to any judicial proceeding.

Section 11. To the extent that the provisions of this Act Are inconsistant with federal law, they shall not apply.

 

March 26, 1973

Amendments by Sen. Fred Heard to S.B. 15.

A. Enlarging the Preamble.

B. Outlining specific requirements for notices of meetings.

C. Allowing for exclusion of newsmen who break the agreement on disclosure conditions.

---

Section 1. It is the intent of this Act that the [actions] decisions of public bodies be taken openly and that their deliberations be conducted openly. The authority delegated by the people of this state to their public servants does not allow public servants to withhold information from the people. The people insist on remaining informed so that they may retain control over the public bodies they have created.

---

Section 4. The governing body of a public body shall hold its meetings only after written notice has been delivered, either personally or by mail, at least 24 hours before the time of such meeting, to each member of the governing body, and upon request in writing, to each local newspaper of general circulation, radio or television station. Such notice shall include the time and place of the meeting, and all those matters on the agenda of the meeting. Only those matters included in the notice for the meeting may be decided upon at such meeting. In areas where there is

neither a local newspaper of general circulation that publishes in the interim between delivery of the notice required by this subsection and the meeting, nor a radio or television station, a notice containing the required information shall be posted in at least one place accessible to the public at least 24 hours before the time of such meeting.

(2) In the event of fire, flood, earthquake or other such emergency, the provisions of this section shall not apply, but such notice as is possible under the circumstances shall be given.

---

Section 6. (3) Subject to such conditions governing the disclosure of information as shall be agreed to by the governing body and representatives of the news media, such representatives of the news media shall be allowed to attend executive sessions. The failure of a representative of the news media to comply with the agreed upon conditions shall be justification for the exclusion of such representative of the news media by the governing body at subsequent executive sessions.

**DEPARTMENT OF COMMERCE**

**BANKING DIVISION**

COMMERCE BUILDING • SALEM, OREGON • 97310 • Phone 503—378-4140

TOM McCALL
GOVERNOR

JOHN B. OLIN
Superintendent of Banks

March 26, 1973

Professional Responsibility Committee
Oregon State Senate
Room 314 Capitol Building
Salem, Oregon 97310

Dear Friends:

I am grateful for the opportunity to respond to your invitation to comment on your most recent draft of Senate Bill 15. Although the present draft certainly clarifies a number of problems that were inherent in the original bill, it does not speak of the State Banking Board and the problems it would face in compliance with it.

I think we should keep a basic concept in mind as respects the Banking Act. It is a piece of legislation that is designed solely to protect the public; that is, the creditors and depositors of a bank. It is very strict and not particularly conducive to interpretation. The changes that are made are made legislatively so that the public is able to voice themselves through their legislators or at committee hearings.

In my testimony of several weeks ago I outlined to you the problems that we were facing in conforming to the confidential sections of our code, 706.720 and 706.730, and also the typical subjects that came before our Board, which is an advisory board to the Director of Commerce. There is also in the Act a section where the Superintendent has latitude to rule, hence, does so through the Administrative Procedures Act, and thus directly involves the public with notification to the newspapers and other media, etc.

Although we talk in the board meetings about such mundane things as salaries and budgets, interpretations of law, etc., no decision can be made or finalized by the Board and it ultimately becomes the Superintendent's problem to face whatever issue is at hand. Matters involving changes under the law, if permitted by ruling, take it into the public sector.

 

March 26, 1973



The real problem areas are:

1. Reserve triangulation.

2. Cease and desist problems on inordinate bank practices.

3. Correlating corrective actions being taken by the FDIC.

4. Removal of officers.

5. Selling the bank's assets or its deposits to a solvent bank.

6. Mergers of insolvent banks.

7. Second mortgage financing.

8. Illegal branching activity.

9. Problem loans or specific type of generally faulty loan problems that will develop within the banking community; and so on.

In all of these cases we are not talking in generalities in the Banking Board. We are talking about specifics, meaning the name of the bank, the name of the customer or the loan borrower, and we would not think that it would be in the public interest to reveal this type of information. As a matter of fact, it would be in the public interest that it was kept confidential.

Where there is a problem bank and the only solution is to sell the assets or merge it or close it, advance information to the public could, in the former two cases, create a run that would make it impossible to put together a final transfer to a solvent bank or, in the case of an insolvent bank facing closure, advance information might make it possible for certain customers to be preferred over others.

In studying this bill in its present form, I can see many reasons for this type of legislation, particularly as it keeps the public informed in matters of decision relating to city councils, school boards, etc. I can't see where the public would be served by leaving it in the present form, hence;

March 26, 1973



I would suggest a four-word amendment to Section 10 after the word, "probation," in the second line, "the State Banking Board."

Similarly, when you deliberate on House Bill 2157 on the public records section, the suggestions in my previous testimony on the last page would seem appropriate.

Yours sincerely,

John B. Olin
Superintendent of Banks

JBO:ep

 

APPENDIX C (3/26/73)

Proposed Amendments to Amended Draft of SB 15 dated March 5, 1973
Submitted by Oregon School Boards Association
March 12, 1973

On page 1 of the amended draft, after "Section 1", insert "(1)."

Before "Section 2", insert "(2) The people of this state, in delegating authority to governing bodies of public bodies, do recognize that governing bodies must have adequate flexibility and ability to exercise discretion that will enable them to provide effective administration of public bodies in the public interest. Nothing in this Act is intended to inhibit discretionary or decision-making procedures or authority of governing bodies that will prevent them from acting in the public's best interest.

In Section 2, subsection (2), delete the last part of the sentence reading ", and where no decision is made."

On page 3 of the amended draft, before Section 4, add the following subsection "(5) A governing body may expel or exclude any person from a meeting or hearing when necessary to preserve order."

In Section 4, in the second sentence, and after the word "earthquake", insert ", civil disorder".

In Section 6, add an additional sentence at the end, "Such continuation of the hearing shall not require notice in the manner specified by Section 7 of this Act."

On page 5, in Section 8, delete the language of Subsection (1) and replace with the following language: "Nothing contained in this Act shall prevent the governing

body of a public body from holding executive sessions during a regular or special meeting to consider the following matters:

(a) Any deliberation involving an individual's character or reputation, including any such action involving appointment, employment, or dismissal of a public officer or employe, appointments to boards or committees, or appointments to fill vacancies on the board;

(b) Consultations with legal counsel concerning matters which are or may be the subject of litigation in which the public body or governing body is or may be a party;

(c) Any issues concerning the selection of site or the purchase of real estate, when publicity regarding such consideration might reasonably be expected to increase the price;

(d) To determine strategy with respect to legislation or staff, student, or public demonstrations or potential demonstrations;

(e) Labor negotiations and matters related thereo;

(f) Records, data or information that is exempted by law from public inspection.

On page 5 of the amended draft, add a new Section (a). "At the discretion of the governing body, meetings of a committee or subcommittee of a governing body consisting of less than a quorum and at which no policy decision can be made may be exempted from the notice and meeting place requirements under Sections 4, 5, 6 and 7 of this Act.

LEE JOHNSON
ATTORNEY GENERAL

APPENDIX D (3/26/73)

DEPARTMENT OF JUSTICE
STATE OFFICE BUILDING
SALEM, OREGON 97310

TELEPHONE: (503) 378-4400

March 26, 1973

Hon. Jack Ripper, Co-Chairman
Professional Responsibility Committee
314 Capitol Building
Salem, Oregon

Dear Senator Ripper:

I received today the March 20 draft of Senate Bill 15. There are only a few substantive points in the bill with which I would take disagreement with. I do, however, feel that the bill has some very serious drafting errors which could make it extremely difficult to administer or for the courts to interpret. I will discuss my substantive recommendations first.

1) The last sentence of Section 4 would prohibit even emergency meetings on less than 24 hour notice. This seems unduly restrictive. I believe the sentence should be deleted. The preceding sentence provides for sufficient guarantee of notice.

2) Section 5 requires that minutes of executive sessions be available to the public. This provision totally destroys the confidentiality of executive sessions which are allowable under Section 6. It would be our suggestion that a provision be inserted in the bill stating: "Minutes of executive sessions lawfully held under Section 6 of this Act are confidential, but only to the extent and so long as the public interest preserving confidentiality thereof outweighs the public interest in disclosure."

3) Section 6(a)(b) permits an executive session to discuss personnel matters only in those cases where the executive session is requested by the employee being considered. This provision seems unrealistic. Very often a governing body is considering the appointment of an individual to a position. The individual sometimes is not even aware that his appointment is being considered. It would seem the original language of Senate Bill 15 is more appropriate. That language provides:

 



"(a) . . . to consider the appointment, employment or dismissal of a public officer, employee, staff member or agent (other than to fill a vacancy in an elective office);

"(b) To hear complaints or charges brought against a public officer, employee, staff member or agent unless such officer, employee, staff member or agent requests a public hearing."

4) Paragraph 6, 2(b): It is our opinion that this provision is too broad. Many government records are given a qualified privilege based upon a weighing of the public interest test. The determination in these cases is made by a court or other judicial official. Under Subsection 6(2)(b) the governing body would be in a position to make this initial determination and thus could defeat the entire purpose of Senate Bill 15. It is our recommendation that the language be changed to apply to certain specific confidentiality statutes as follows: "To consider records, the disclosure of which is prohibited under 146.780, 179.495, 336.195, 351.065, 411.320, 416.230, 418.135, 418.770, 419.567, 432.060, 432.425, 432.430, 657.665, 706.720, 706.730, 715.090, 721.050."

5) Section 7 prohibits meetings by means of electronic communications. Such meetings are often desirable and necessary to meet emergency situations. It seems to me there is no reason why such meetings should be prohibited, provided the notice provisions in Section 4 are complied with.

The drafting errors primarily relate to Sections 2 and 6. Section 2 contains a series of inter-related definitions which are confusing and almost incomprehensible. To illustrate, if I correctly read subsections 2, 3 and 4 together, the governing board could include any two employees of the state. It is only by reading therein Subsection 6 which defines "meeting" am I able to ascertain that this bill only applies to governing and advisory boards and not to individual governmental employees. Furthermore, although "governing body" is defined to mean the members of a public body, the remaining section of the bill continually repeats the phrase "the governing body of a public body". I believe that you can accomplish the same objective by having one single definition of governing body which would mean "Any public body, bureau, commission, committee or subcommittee consisting of two or more members which has authority to make decisions or recommendations on policy or administration for or to the state, or any county, city, district, municipality or corporation of this state."

Section 6 of the bill repeats in Subsection 1, 2 and 4 the requirements of how to convene an executive session. It seems appropriate that these requirements all be set forth in Subsection 1.

Section 3, Subsection 2 of the bill would seem to prohibit any executive meetings. It would seem appropriate to insert the words, "except as otherwise provided by this Act.".

I hope these comments will be of some assistance.

Yours very truly,

LEE JOHNSON
Attorney General

LJ:bjm

3-26-73 148

file
HB2159
SB15

Alan J. Gardner

421 S. W. Oak Street
Portland, Oregon 97204
Phone (503) 226-5541



March 21, 1973

Senator Jack D. Ripper
Representative Robert C. Ingalls
Co-chairmen, Joint Special Committee
on Professional Responsibility
State Capitol Building
Salem, Oregon 97310

Re: Reporter's Privilege: SB 32, 97 and 206 and HB 2104

Dear Senator Ripper and Representative Ingalls:

The Board of Trustees of Temple Beth Israel of Portland, Oregon have authorized me to make the following statement:

> We wish to express our concern over the political, social and legal trends in our State and Nation as reflected in the recent attempts to abridge the news media. It appears that our government is accumulating and exercising greater power while attempting to withhold information necessary for public study and understanding. There seems to be an effort to mold the public's sources of information to fit the government's needs. We are especially concerned by the recent initiative on the part of the Federal Communications Commission to hold local radio and TV channels accountable for content of their programming at renewal hearings for broadcast licenses, especially as that reference is made to news programming.
>
> It is with deep regret that we conclude the situation has deteriorated to a point where legislation of the type proposed is necessary. Therefore, we offer our full and complete support to passage of SB 206, including the American Civil Liberties Union's proposed amendments to Section 5(1), subsections (a), (b), (e), but excluding subsections (c) and (d).

If further hearings are to be held before a House vote is taken, we would appreciate the opportunity to present a brief oral statement of between five and ten minutes.

Very truly yours,

BOARD OF TRUSTEES
TEMPLE BETH ISRAEL

By Alan J. Gardner
ALAN J. GARDNER
Co-chairman, Subcommittee on
Reporter's Privilege

March 28, 1973

S.B. 15, as amended by the Joint Special Committee on Professional Responsibility, March 26.

Also including form and style amendments proposed by Legislative Council, indicated by brackets and underscoring.

A BILL FOR

AN ACT

Relating to public meetings; and requiring penalties.

Be it Enacted by the People of the State of Oregon:

Section 1. The Oregon form of government requires an informed public aware of the deliberations and decisions of governing bodies and the information upon which such decisions were made. It is the intent of this Act that decisions of governing bodies be arrived at openly.

Section 2. As used in this Act:

(1) "Decision" means any determination, action, vote or final disposition upon a motion, proposal, resolution, order, ordinance or measure [by] on which a majority vote of a governing body is required, at any meeting at which a quorum is present.

(2) "Executive session" means any meeting or part of a meeting of a governing body which is closed to certain persons for consideration of certain matters.

(3) "Governing body" means the members of any public body [consisting] which consists of two or more members, with the authority to make decisions or recommendations on policy or administration for or to a public body.

(4) "Public body" means the state, any county, city or district, or any municipal or public corporation, or any board, department, commission, council, bureau, committee or subcomm-

ittee or advisory group or any other agency thereof.

(5) "Matter" means any subject, business, issue, proposal, concern, action or measure.

(6) "Meeting" means the convening of a governing body of a public body for which a quorum is required in order to make a decision or to deliberate toward a decision on any matter.

Section 3. (1) All meetings of the governing body of a public body shall be open to the public and all persons shall be permitted to attend any meeting [of the governing body of a public body] except as otherwise provided by this Act.

(2) No quorum of a governing body shall meet in private for the purpose of deciding on or deliberating toward a decision on any matter except as otherwise provided by this Act.

(3) A governing body [of a public body] shall not hold a meeting at any place where discrimination on the basis of race, creed, color, sex or national origin is practiced.

Section 4. The governing body of a public body shall provide for and give public notice of the time and place for holding regular or special meetings. If an executive session only will be held the notice shall be given to the members of the governing body, and to the general public, stating the specific provision of law authorizing the executive session. No special meeting shall be held without at least 24 hours notice to the members of the governing body and the general public. In case of an actual emergency a meeting may be held upon such notice as is appropriate to the circumstances.

Section 5. (1) The governing body of a public body shall provide for the taking of minutes of all its meetings. Neither a full transcript nor a recording of the meeting is required, except as otherwise provided by law, but the minutes must give a true reflection of the [business of] matters discussed at the meeting and the views of the participants. All minutes shall be available to the public within a reasonable time after the meeting, and shall include at least the following information:

(a) All members of the governing body present;

(b) All motions, proposals, [and] resolutions, orders, ordinances and measures proposed and their disposition;

(c) The results of all votes, and upon the request of a member, the vote of each member, by name;

(d) The substance of any [argument] discussion on any matter.

(2) Minutes of executive sessions may be limited to material the disclosure of which is not inconsistent with the provisions of section (6) of this Act.

Section 6. (1) Nothing contained in this Act shall be construed to prevent the governing body of a public body from holding executive session during a regular, special or emergency meeting, after the presiding officer has identified the [section and subsection] authorization under this Act [authorizing] for the holding of such executive session. Executive session may be held:

(a) To consider the employment of a public officer, employe, staff member or individual agent. This paragraph does not apply

to filling a vacancy in an elective office.

(b) To consider dismissal or disciplining or to hear complaints or charges brought against a public officer, employe, staff member or individual agent, unless such public officer, employe, staff member or individual agent requests an open hearing.

(2) Nothing contained in this Act shall be construed to prevent, upon a two-thirds majority vote of the members, the governing body of a public body from holding executive session during a regular, special or emergency meeting, after the presiding officer has identified the [section and subsection] authorization under this Act [authorizing] for the holding of such executive session. Executive session may be held:

(a) To conduct deliberations concerning the authority of persons designated by the governing body to carry on labor negotiations, or to negotiate the purchase of real property.

(b) To consider records that are exempt by law from public inspection.

(c) To consider preliminary negotiations involving matters of trade or commerce in which the governing body is in competition with governing bodies in other states or nations.

(3) Representatives of the news media shall be allowed to attend executive sessions under such conditions governing the disclosure of information as shall be agreed to by the governing body and the representatives of the news media.

(4) No executive session may be held for the purpose of taking any final action or making any final decision.

Section 7. Any meeting, including an executive session, of a governing body of a public body which is held through the use of telephone or other electronic communication shall be conducted in accordance with the provisions of this Act.

Section 8. Any [interested] person affected by a decision of a governing body of a public body may commence a suit in the circuit court for the county in which [a] the governing body ordinarily meets, for the purpose of requiring compliance with, or the prevention of violations or threatened violations of this Act, by members of the governing body, [of a public body] or to determine the applicability of this Act to matters or decisions or threatened decisions of the governing body. The court may order such equitable relief as it deems appropriate in the circumstances. The court may order payment to a successful plaintiff in a suit brought under this section of his reasonable attorney fees, by the governing body, or public body of which it is a part or to which it reports.

Section 9. Each member of the governing body of a public body found in a suit under section (8) of this Act to have attended a meeting or executive session of such governing body where matters are considered or decisions are made in violation of any provision of this Act, with knowledge of the fact that the meeting or executive session is in violation thereof, may be ordered by the court

to make payment for the benefit of the state of a civil penalty not to exceed $1,000.

Section 10. The provisions of this Act shall not apply to the deliberations of the State Board of Parole and Probation, the State Banking Board, the board of any public hospital, the Judicial Fitness Commission, or state agencies conducting hearings on contested cases in accordance with the provisions of ORS chapter 183, the review by the Workmen's Compensation Board of similar hearings on contested cases, or to any judicial proceeding.

Section 11. To the extent that the provisions of this Act are inconsistant with federal law, they shall not apply.

March 28, 1973

S.B. 15, as amended by the Joint Special Committee on Professional Responsibility, March 26.

Also including form and style amendments proposed by Legislative Counsel, indicated by brackets and underscoring.

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(3) "Governing body" means the members of any public body [consisting] which consists of two or more members, with the authority to make ~~decisions~~ for or recommendations to a public body on policy or administration for or to a public body.

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ittee or advisory group or any other agency thereof.

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6. Heard to Lole amendment.

Section 3. (1) All meetings of the governing body of a public body shall be open to the public and all persons shall be permitted to attend any meeting [of the governing body of a public body] except as otherwise provided by this Act.

(2) No quorum of a governing body shall meet in private for the purpose of deciding on or deliberating toward a decision on any matter except as otherwise provided by this Act.

(3) A governing body [of a public body] shall not hold a meeting at any place where discrimination on the basis of race, age creed, color, sex or national origin is practiced.

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reasonably calculated to give actual Notice to interested persons

Section 5. (1) The governing body of a public body shall provide for the taking of written minutes of all its meetings. Neither a full transcript nor a recording of the meeting is required, except as otherwise provided by law, but the written minutes must give a true reflection of the [business of] matters discussed at the meeting and the views of the participants. All minutes shall be available to the public within a reasonable time after the meeting, and shall include at least the following information:

(a) All members of the governing body present;

(b) All motions, proposals, [and] resolutions, orders, ordinances and measures proposed and their disposition;

(c) The results of all votes, and upon the request of a member, the vote of each member, by name;

(d) The substance of any [argument] discussion on any matter.

(2) Minutes of executive sessions may be limited to material the disclosure of which is not inconsistent with the provisions of section (6) of this Act.

Section 6. (1) Nothing contained in this Act shall be construed to prevent the governing body of a public body from holding executive session during a regular, special or emergency meeting, after the presiding officer has identified the [section and subsection] authorization under this Act [authorizing] for the holding of such executive session. Executive session may be held:

(a) To consider the employment of a public officer, employe, staff member or individual agent. This paragraph does not apply

to filling a vacancy in an elective office.

(b) To consider dismissal or disciplining or to hear complaints or charges brought against a public officer, employe, staff member or individual agent, unless such public officer, employe, staff member or individual agent requests an open hearing.

(2) Nothing contained in this Act shall be construed to prevent, upon a two-thirds majority vote of the members, the governing body of a public body from holding executive session during a regular, special or emergency meeting, after the presiding officer has identified the [section and subsection] authorization under this Act [authorizing] for the holding of such executive session. Executive session may be held:

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Section 7. Any meeting, including an executive session, of a governing body of a public body which is held through the use of telephone or other electronic communication shall be conducted in accordance with the provisions of this Act.

Section 8. Any [interested] person affected by a decision of a governing body of a public body may commence a suit in the circuit court for the county in which [a] the governing body ordinarily meets, for the purpose of requiring compliance with, or the prevention of violations or threatened violations of this Act, by members of the governing body, [of a public body] or to determine the applicability of this Act to matters or decisions or threatened decisions of the governing body. The court may order such equitable relief as it deems appropriate in the circumstances. The court may order payment to a successful plaintiff in a suit brought under this section of his reasonable attorney fees, by the governing body, or public body of which it is a part or to which it reports. No decision of governing body shall be void

Section 9. Each member of the governing body of a public body found in a suit under section (8) of this Act to have attended a meeting or executive session of such governing body where matters are considered or decisions are made in violation of any provision of this Act, with knowledge of the fact that the meeting or executive session is in violation thereof, may be ordered by the court

to make payment for the benefit of the state of a civil penalty not to exceed $1,000.

Section 10. The provisions of this Act shall not apply to the deliberations of the State Board of Parole and Probation, the State Banking Board, the board of any public hospital, the Judicial Fitness Commission, or state agencies conducting hearings on contested cases in accordance with the provisions of ORS chapter 183, the review by the Workmen's Compensation Board of similar hearings on contested cases, or to any judicial proceeding.

~~Section 11. To the extent that the provisions of this Act are inconsistant with federal law, they shall not apply.~~

Loretta Hill, Clerk 16
HB 215
SB 15

SALEM: Local Government Center
1201 Court Street N.E.
P.O. Box 928, Salem 97308
Telephone: (503) 585-6987

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University of Oregon
P.O. Box 3177, Eugene 97403
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# League of Oregon Cities

MEMBER, NATIONAL LEAGUE OF CITIES • OFFICIAL PUBLICATION "WESTERN CITY"

Salem, Oregon
April 2, 1973

To: Joint Committee on Professional Responsibility
Senator Jack Ripper, Senate Chairman
Representative Robert Ingalls, House Chairman
Senator Wallace P. Carson, Vice Chairman
Representative Ed Lindquist, Vice Chairman
Senator Edward N. Fadeley
Senator Tom Hartung
Senator Fred W. Heard
Representative George F. Cole
Representative Margaret U. Dereli
Representative Norma Paulus

The League of Oregon Cities legislative committee has reviewed the re-draft of SB 15, and we wish to offer the following comments and suggestions with regard to some practical problems that the bill would create in the operation of city government in Oregon:

1. Definition of Governing Body and Public Body. The definitions of "governing body" and "public body" in Section 2 appear to extend the open meeting requirements of the bill to meetings of staff members and department heads in city government who formulate recommendations to city councils for action. As one example, it is fairly common procedure for city managers to assemble committees or teams of staff members to formulate the basic budget document that is later presented to the budget committee of the city for action. As another example, a city manager frequently meets with his department heads prior to council meetings for purposes of discussing the council meeting agenda and formulating recommendations that the manager will make to the council. A strict reading of SB 15 would lead to the conclusion that such internal operating sessions must be open public meetings, that notice must be given to the public, that minutes must be kept and made available to the public, and that employes are subject to fine if they participate in meetings that don't meet the bill's procedural requirements. We question whether it is the intent of the legislature to require internal staff meetings of cities, as well as state and other public agencies, to come under the open meeting requirement.

2. Executive Sessions. City officials believe strongly that at least two types of discussions by city councils need to be conducted in executive session, in addition to those already listed in the bill:

a. Collective Bargaining Negotiations. City officials who have been involved in negotiating sessions indicate that one element of the bargaining process is the need for negotiators to engage in free and open exchange of proposals, some of which seem on occasion to be rather extreme, but which ultimately are helpful in arriving at an agreement. Open meetings for collective bargaining negotiating sessions result in the negotiators making proposals more for the purpose of impressing their audience or their constituents than for the purpose of trying to arrive at an agreement. City officials sincerely believe that effective collective bargaining negotiations will be hampered if required to take place in open public meetings, and we join in supporting the recommendations you have received from other groups that negotiations be allowed to take place in executive session.

b. Consultation with Legal Counsel. In the case of cities discussions need to occur in private with the city attorney on subjects that might involve litigation. The council must decide whether to authorize the city attorney to file suit, to settle out of court, etc., and the council is unable to discuss the strategy questions involved in such decisions if the discussions are subject to open public meeting requirements.

3. Challenges of Actions of Public Bodies. City officials strongly recommend that a provision be added to the bill that would prohibit the validity of actions of a public body from being subject to legal challenge solely on grounds of violating the open public meeting requirements of the law. Without such a clause, city officials believe that cities and other public bodies, including the state, would constantly face lawsuits based on the contention that adequate public notice was not provided for the meeting where the decision occurred or that some other procedural requirement of the open meeting bill was not followed.

Your consideration of these recommendations is respectfully requested. City officials have no quarrel with the concept of open public meetings, but do believe that the points noted above are legitimate practical questions that need to be resolved during the drafting of the final bill.

Sincerely yours,

Executive Secretary

DLJ:bas

Loretta Hill - file

# City of King City

15390 S.W. 116th Avenue
Portland, Oregon
97223

3-27-73.

The Joint Committee On Professional Responsibility,
State Capitol Bldg.,
Salem, Oregon. 97310

To Attention of
Senator Jack Ripper
Representative Robert Ingolls.

Gentlemen:

We are greatly concerned with a proposed bill that we understand is now before your committee. Not having the official designation number will call it the "Open Meeting Bill".. It has not been possible to attend any of the hearings on it.

In common with most City Councils, and most certainly all of the small Cities, we have been concerned for some time with the impact such legislation would impose upon legislative bodies, involved with the operation of small municipalities . Our Council, like most other small Cities, does not meet every day. We meet once a month, and these meetings are well advertised, with agendas posted, have a large attendance with very active audience participation in our considerations, and all actions are taken in this open meeting, or at posted special meetings, following the same procedure. We have always prided ourselves on coming to meetings as well informed as possible, with our home work and research already done. This makes possible an orderly meeting , with decisions based on research and facts, not on expediency. We frequently have discussions with the people in Government at Salem, with the County in Hillsboro, with other Cities in this area, service districts, our own electorate on every occasion, and with each other. We feel that if we did not do these things, we could not properly represent the people, and should not be trying to do this job.If the ability to operate in the most efficient manner is restricted sufficiently, we feel that Council members would no longer voluntarily donate their time and talents to serving the people in the Communities. The frustrations and the time involved would negate against this service. The system has worked well and the vast majority of people seem to like it that way.

We wonder if such legislation could possibly be considered over-reaction to the"demands" of a very few, who may be uninformed regarding operating efficiently at the Council level , or any other public service, not having ever contributed such service personally. We would hope that the vehemence of a small number crusading for the rights of the people will not outshout the voices of the vast majority of these people who feel that the "system" works efficiently, allows them their voice, and are perfectly happy. In those instances where there are violations of rights, they are easily corrected without restricting the entire freedom of procedure to get the job done.

Yours Very Truly,

L.S.Carroll Mayor.

 

Agriculture Department Amendment #5

House Bill 2157

PROPOSED AMENDMENTS

On page 7 of the printed bill, in line 19, after the comma insert "and the amounts of such fees or assessments payable or paid,".

Corrections Division

Amendment #6

House Bill 2157

PROPOSED AMENDMENTS

On page 11 of the printed bill, in line 1, delete the initial bracket and restore: "(e) A public officer shall not be examined as to", and insert "public records exempt from disclosure under this 1973 Act."

On page 11, in line 4, restore "(f)" and delete "(e)".

On page 11, line 7, restore "(g)" and delete "(f)".

On page 11, line 11, restore "(h)" and delete "(g)".

On page 11, line 15, restore "(i)" and delete "(h)".

Health Division

Amendment #7

House Bill 2157

PROPOSED AMENDMENTS

On page 2 of the printed bill, in line 4, delete "432.115,"

On page 2, in line 6, delete "432.120,"

On page 2, in line 7, delete "432.130,"

On page 8, in line 6, after "432.060," insert #432.120,".

On page 17, delete lines 5 through 11 and insert:

"Note: Section 21 was deleted by amendment."

Motor Vehicles Division

Amendment #8

House Bill 2157

PROPOSED AMENDMENTS

On page 2 of the printed bill, in line 4, delete "483.610,".

On page 8, in line 7, after "474.160" insert ", 483.610".

On page 17, delete lines 24 through 34 and insert:

"Note: Section 23 was deleted by amendment."

On page 18, delete lines 1 through 19.

 

Public Employe Relations Board Amendment #9

House Bill 2157

PROPOSED AMENDMENTS

On page 8, following line 7, insert:

"(p) The names and signatures of employes who sign authorization cards or petitions for the purpose of requesting representation or decertification elections."

Note: New paragraphs (n) and (o) to Section 11(1) would be added by other proposed amendments.

 

Insurance Division

Amendment #10

House Bill 2157

PROPOSED AMENDMENTS

On page 2 of the printed bill, in line 8, after "697.725" delete the comma and insert "and", and delete "and 744.017".

On page 8, in line 7, delete "or" and insert a comma, and after "657.665" insert ", 731.264 or 744.017".

On page 22, in line 29, after "697.725" delete the comma and insert "and", and delete "and 744.017".

State Accident Insurance Fund Amendment #11

House Bill 2157

PROPOSED AMENDMENTS

On page 2 of the printed bill, in line 5, delete "and" and insert a comma, and after "579.185" insert "and 656.702".

On page 2, in line 7, delete "656.702,".

On page 8, in line 7, after "474.160" insert ", 656.702".

On page 22, following line 26, insert:

"Section 33a. ORS 656.702 is amended to read:

"656.702. The records of the [board and the] State Accident Insurance Fund, excepting [payrolls and confidential reports] employer account records and dividend schedules and formulas shall be open to public inspection. The accident experience records of the fund [for periods prior and subsequent to January 1, 1966,] shall be available to a bona fide rating organization to assist in making workmen's compensation rates providing any costs involved in making the records available shall be borne by the rating organization. Accident experience records of direct responsibility employers insuring with insurers issuing guaranty contracts under subsection (1) of ORS 656.405 shall also be available on the same terms to assist in making such rates."

On page 22, in line 29, delete "656.702,".

 

Amendment #12

House Bill 2157

PROPOSED AMENDMENT

On page 3 of the printed bill, delete lines 14 through 33 and insert:

"Note: Sections 6, 7 and 8 were deleted by amendment."

On page 4, delete lines 1 through 29.

On page 4, line 30, after "(1)" delete the rest of the line and insert:

"Any person denied the right to inspect or to receive a copy of any public record may file suit for injunctive or declaratory relief in the circuit court for the county in which the record is believed to be maintained.

"(2) In any suit filed under this section,"

On page 4, in line 31, delete "Act,".

On page 4, in line 33, delete "court shall determine the matter".

On page 4, in line 34, delete "de novo and the".

On page 5, in line 4, delete "(2)" and insert "(3)".

On page 5, in line 5, delete "Sections 6 to 8 of this 1973 Act" and insert "this section".

On page 5, in line 8, delete "(3)" and insert "(4)".

On page 5, delete lines 13 through 34 and insert:

"Note: Section 10 was deleted by amendment."

On page 6, delete lines 1 through 8.

 

State Fire Marshall

Amendment #13

House Bill 2157

PROPOSED AMENDMENTS

On page 2 of the printed bill, in line 4, delete "476.090,"

ON page 8, in line 7, after "474.160" insert ", 476,090".

On page 17, delete lines 12 through 23 and insert:

"Note: Section 22 was deleted by amendment."

# MOTOR VEHICLES DIVISION

1905 LANA AVENUE N.E. • • SALEM, OREGON • • 97310

TOM McCALL
GOVERNOR

CHESTER W. OTT
Administrator

April 12, 1973

The Honorable Lee Johnson
Attorney General
State Office Building
Salem, Oregon 97310

Dear Mr. Johnson:

This is to offer our comments concerning House Bill 2157. Most records maintained by the Motor Vehicles Division are public records. Information may be obtained upon request, and for the statutory fee, as outlined in the ORS chapters. There are three exceptions to this:

1. The medical information on the fixed segment of the driving record which describes medical conditions of the driver as submitted by the State Board of Health (ORS 482.141(3) ).

2. Accident reports of drivers, with a very small exception (ORS 483.610). These may not be used as evidence in court processes (ORS 483.610 and ORS 486.061).

3. Vehicle licenses and driver's licenses which are issued to law enforcement personnel who are working on undercover investigations, on special request. This is not specifically authorized by law. Senate Bill 404, which has passed the Senate, would provide statutory authority for this.

We feel that the medical segment and the undercover protection provided to law enforcement should be denied public access. With respect to accident reports, we feel that this is a matter of legislative direction and should this become public record we suggest that ORS 486.061 be amended to allow the admissibility of the accident report as evidence in court.

If you feel that you cannot accommodate our suggestions, please advise us so that we may offer our testimony to committees on these points.

Yours sincerely,

Chester W. Ott

CC:Senator Ripper
Representative Ingalls

# CORRECTIONS DIVISION

## DEPARTMENT OF HUMAN RESOURCES

2575 CENTER STREET N.E. • SALEM, OREGON • 97310 •



April 12, 1973

The Honorable Lee Johnson
Attorney General
Department of Justice
State Office Building
Salem, Oregon 97310

Dear Mr. Johnson:

This letter is in response to your memorandum concerning House Bill 2157, received April 9, and to Senator Jack Ripper's April 10 letter concerning Senate Bill 15 and House Bill 2157.

It is our understanding that the proposed changes in HB 2157 include deletion of Section 12; addition of wording to assure continued confidentiality of protected items as they pass from one agency to another; and a few adjustments concerning tax and banking records. Assuming these proposed changes, two other concerns should be considered:

(1) The definition of "public body" provided in SB 15 is not identical to that provided in HB 2157. The differences in wording raise the question of whether minutes of non-public meetings would be matters of general public record. If so, this would seem to be an inconsistency in approach, as we understand the intent of HB 2157.

(2) HB 2157, Section 11 (1), protects information submitted in confidence. Yet, Section 13 deletes the provision that public officials holding such information cannot be examined concerning it, even when the public interest would suffer by disclosure. This appears to be an inconsistency which could result in confusion, and which seems to violate the intent of the initially granted protection.

Having called these issues to your attention, the Corrections Division will abide by your decisions, and will not take issue with HB 2157 as amended.

Sincerely,

Amos E. Reed
Administrator

AER:ocz
cc : Sen. Jack Ripper ✓

April 16, 1973

Amendments to S.B. 15.
By Rep. Robert Ingalls.
For the Joint Special Committee
on Professional Responsibility.

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Section 6 (2) (d). Line 20 page 4. Delete.

Section 6 (4). Lines 25-28 page 4. Amend as follows:

(4) Representatives of the news media [may] shall be allowed to attend executive sessions under such conditions governing the disclosure of information as [may] shall be agreed to by the governing body and the representatives of the news media.

Section 8. Lines 10-11 page 5. Amend as follows:

No decision shall be voided by the court because of a violation of this Act, unless such decision violates the rights of any person vested or arising under any other law or ordinance.

Further memorandum submitted to the Senate Committee of Professional Responsibility

Subject: HB 2157

FROM: Michael Papadopoulos, 5370 Lawrence Ave. NW, Corvallis,Oregon.

This is a memorandum by which I intend to clarify comments made in relation to Section 11 (2) (c) of HB 2157, as Engrossed on page 7. This Section is one which is to replace ORS 44.040 (1) (e), a statute which has been used both in Oregon and in other states (with similarly worded statutes) as a protection of the identity of an informer.

The privilege enjoyed by the informer is that there is normally granted a privilege by which the public official may not be forced by the courts to divulge the name of the source of information, except when disclosure of that name is essential to a fair determination of a cause. This is a common law privilege, of which it is generally regarded proper for the courts to look at the question of whether or not the public interest would suffer by disclosure. Roviaro v. United States, 77 Supreme Court Opinions, 623 (1957) . The informer privilege is not enjoyed by a participant in an investigative process.

The privilege to be conferred by Section 11(2) (c) should, in my opinion involve

(a) a statute which confers upon a named agency or official of the state authority to take up an investigative role ~~role~~ in seeking out criminal violations.

Thus, just as a district attorney is given powers to confer confidentiality on informers, so the Secretary of State has such powers in relation, and only in relation, to his authority to seek out violations of any election law, so also will an agency (OLCC, DEQ, etc. ) which is granted authority to seek out and prosecute violations of laws or regulations in its own restricted sphere of interest.

(b) Rules which restrict the number of officials authorized to receive confidential information from informers and to offer confidentiality.

Not just any employee of a state agency or official having authority to investigate violations should have the power to promise confidentiality . I doubt if the janitor at the police station, having knowledge of an informer's identity, could refuse to divulge that identity in court on the basis of the informer privilege.

(c) A clear distinction between the name of an informer and the information, supplied in regard to what is intended to be kept secret.

The informer privilege is intended to protect the bringers of information from retaliation. It is not meant to keep his information secret, since such information is generally brought out as a cause, or probable cause, for prosecution. I suggest that the information given by an informer could be covered by Sections 11(2)(a) and 11(2)(b) and perhaps also by Section 11(1) (a), and that therefore Section 11(2) (c) should be restricted to the source of information. Thus I would propose, in the general interest of reducing statutory grants of confidentiality to the minimum, an amendment in the following manner:

Section 11 (2) (c):

Proposed Amendment

(c) The name of the individual submitting information to a public body in confidence, where such information is not otherwise required by law to be submitted, where such information should reasonably be considered confidential, and where the public body has been authorized to solicit such information in performing investigations properly within the scope of its authority under statute, and has obliged itself in good faith not to disclose the name of the individual submitting information, and where the public interest would suffer by the disclosure.

I hope this point is clearly made, and I hope it will prove acceptable as an amendment.

Michael Papadopoulos.
June 12, 1973.

Further memorandum submitted to the Senate Committee of Professional Responsibility

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I hope this point is clearly made, and I hope it will prove acceptable as an amendment.

Michael Papadopoulos.
June 12, 1973.

# AMENDMENTS TO CURE THE CONFLICT WITH RE-ENGROSSED HOUSE BILL 2101

Legislative Counsel
June 18, 1973

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL 2157

On page 9 of the printed engrossed bill, line 21, after "44.040" insert ", as amended by section 6, chapter ___, Oregon Laws 1973 (Enrolled House Bill 2101,".

On page 10, line 5, after "(d)" insert "Subject to the provisions of sections 1 through 5 of chapter ___, Oregon Laws 1973 (Enrolled House Bill 2101),".

PROPOSED SENATE AMENDMENTS TO ENGROSSED HOUSE BILL 2157

By

Norman O. Nilsen, Commissioner of Labor

June 11, 1973

On page 6 of the printed engrossed bill, line 12, after "litigation" insert "in the courts or before an administrative agency".

In line 13, after "party" insert "or is involved".

In line 27, after "information" insert "of any law enforcement agency for purposes of carrying out any duty or responsbility required by law or".

STATEMENT OF THE AMERICAN CIVIL LIBERTIES UNION OF OREGON

before the

JOINT COMMITTEE ON PROFESSIONAL RESPONSIBILITY

regarding

HB 2157 - Relating to public disclosure by public bodies of public matters

APRIL, 1973

Free access to government-held information is a significant right and has been recognized as such since the earliest days of this country's existence. As President James Madison said:

> "A popular Government without popular information, or the means of acquiring it, is but a Prologue to a Farce or a tragedy; perhaps both. Knowledge will forever govern ignorance; And the people who mean to be their own Governors, must arm themselves with the power which knowledge gives."

The ACLU supports the expansion and clarification of the public's right to know about government. The ACLU supports a revision of Oregon law designed to guarantee disclosure of information from public bodies unless withheld for compelling and legitimate reasons.

HB 2157, the "Right to Know" bill, is an appropriate move in the proper direction to provide individuals a right of access to public records. The intent of this proposed legislation is to guarantee public access to government information where such access does not unduly interfere with legitimate public body activity or invade personal privacy. At the same time that a broad philosophy of the public's "right to know" is enacted into law, it is also necessary to protect equally important rights of privacy with respect to certain information in governmental files, such as medical and personnel records.

Finding the proper balance between disclosure and non-disclosure of public records is a difficult task. This proposed statute does an admirable job in attempting to determine the proper balance. The ACLU supports HB 2157 with several recommended changes which we think will improve the dual goals of the legislation: public access to public records and protection of privacy.

Our attention will be principally focused on the exceptions embodied in Section 11. A number of technical amendments to the bill itself are appended to our comments.) We will address ourselves to several of the exceptions, but first call your attention to a troublesome matter of how several of the exceptions would work in practice.

The introductory language to Section 11 provides as follows:

> " 1) The following public records are exempt from disclosure. . . unless the public interest requires disclosure in the particular instance:"

The exemptions are not absolute; in each instance in which a public body believes an exemption applies, it must nevertheless also determine whether the public interest requires disclosure. Thus, each listed exemption would appear to be subject to the qualifying "unless" language. This would be an emportant and beneficial limitation on otherwise unqualified exemptions. The public body would proceed through a two step process:

1) Do the records in question fall within a defined

exemptions; and

2) Does the public interest require disclosure notwithstanding the exemption?

Who would carry the burden of proof on these two questions? Section 6 declares that in a court proceeding, "the burden is on the public body to sustain its action." This would mean that the public body must prove both elements in order to sustain its action. As a practical matter where a public body denies disclosure and an appeal is taken to the courts, the burden of proof will fall upon the demandant because of the inherent weakness in expecting the public body to prove a negative concept, namely, that the public interest does not require disclosure. It would be expected that in any given case the public policy underlying the exemption would be given presumptive weight and would warrant the non-disclosure unless it were satisfactorily shown that the public interest in disclosure was a superior interest.

The foregoing would all be understandable if several of the listed exemptions in Section 11 did not each specify their own qualifying language somewhat at odds with the "unless" clause of Section 11 1). See subsections a), c), d) and L). We will outline each exemption in terms of its own qualifying language and then point out any inconsistency and overlap with the general qualifying language of Section 11 1).

Section 11 1) a) exempts certain memoranda of public bodies covering other than factual information and preliminary to any final determination. But note that such memoranda are exempt only if the public body shows that the public interest in encouraging frank communication between officials "clearly outweighs" the public interest in disclosure." Here the public policy underlying the exemption is not to be given presumptive weight, but instead balanced against the public interest in disclosure. In fact, presumptive weight appears to be granted to the disclosure interest by the use of the word "clearly." The qualifying tests in Section 11 1) and in Section 11 1) a) are inconsistent.

Section 11 1) c) exempts information of a personal nature if the public disclosure would constitute an unreasonable invasion of privacy. That would be fine if the matter ended there. But this exemption would be subject to the "unless the public interest requires disclosure" language of Section 11 1). If a balancing of interests is to ocur, surely greater weight must be given to the privacy interests over disclosure. Here, the qualifying language might appropriately read: "unless the public interest by clear and convincing evidence requires disclosure in the particular instance."

Section 11 1) d) exempts information submitted to a public body "in confidence" and not otherwise required by law to be submitted unless the public interest in disclosure clearly outweighs the public and private interest in non-disclosure. Again there is an overlap and inconsistency with Section 11 1). First, the section expressly gives presumptive weight to the exemption and second, it talks in terms of a private as well as a public interest in non-disclosure.

Section 11 1) L) exempts information and records of the Corrections Division where the public interest in confidentiality clearly outweighs the public interest in disclosure. Again there is an overlap and inconsistency with Section 11 1); note the use of the word "clearly."

Our analysis leads us to the conclusion that each of these exemptions should be specially qualified by their own qualifying language and not subject to the general "unless" clause of Section 11 1). This would mean that two separate paragraphs should be drafted in Section 11 with subsections b), e), f), g), h), i), j) and k) subject ot the general "unless" language and subsections a), c), d), L) and m) subject to their own specific qualifying language.

Before setting forth our recommendation on how Section 11 should read, we would like to discuss the merits of several of the listed exemptions.

First. The "as otherwise provided by law" exemption -- Section 11 1) m).

We begin with a discussion of the last exemption. Section 11 1) m) lists a number of statutes where the legislature previously as a matter of policy has declared certain public records to be confidential and not available for disclosure to the public or has delegated the authority to declare certain public records confidential to specific agencies. To list a few:

ORS 173.230 deals with matters brought before the Legislative Counsel and provides that neither the Legislative Counsel nor employees of his office shall reveal the nature of any matter before him in his official capacity, if the person bringing the matter before him designates the matter as confidential.

ORS 336.195 authorizes elementary and secondary schools to designate certain student records as confidential. According to ORS 336.205, such a designation of confidentiality means that the records are not to be considered "public records" within the existing "right to know" law, ORS 192.005.

ORS 419.567 provides that the record of a juvenile case shall be withheld from public inspection.

ORS 351.065 permits the State Board of Higher Education by or through the institutional executive of each institution to designate certain personal records of faculty and students as confidential and thereby not to be considered "public records" within the existing "right to know" law, ORS 192.005.

Indeed, subsection m) makes reference to ORS 44.040 which includes the attorney-client testimonial privilege. ORS 44.040 b) for example makes communications between a public body and its attorney confidential.

We believe that there are a limited number of specific contexts in which public records should not be opened to the public for examination except in very narrow circumstances. Many of the statutes listed in subsection m) concern personal records of private information. The legislature has considered each of these contexts as special cases and set the policy accordingly for each. The "Right to Know" bill should retain the limitations on public access created in those specific contexts and not open a pandora's box by subjecting each such special context to the "unless" language of Section 11 1). The statutes listed in Section 11 1) m) should be expressly declared exemptions to the "Right to Know" law and public access to those records should be handled in accordance with the public policy set forth in each statute.

Second., The "internal advisory communications" exemption -- Section 11 1) a).

This exemption covers inter-public body and intra-public body communications concerning other than factual materials and preliminary to any final public body determination of policy or action. The exemption should expressly be limited to contexts in which final action has not been taken. We recommend that the exemption be amended to provide that once final action is taken on a matter by a public body, all records that relate to that matter should be available to the public. Moreover, it should also be expressly spelled out that where public records contain exempt advisory material and also factual material, the public body must separate out the factual material and make it available to the public upon request.

One troublesome point is that a public body could effectively thwart the public disclosure policy of the "Right to Know" law by classifying documents as advisory and preliminary to final action. The legislative history, if not the express language of the exemption should make it clear that if a public body does not have a present intention to proceed to final action within a reasonable time period, the records are not within the exemption.

Third. The records "pertaining to litigation" exemption -- Section 11 1) b).

Section 11 1) b) covers records of a public body "pertaining to litigation" in progress or reasonably likely to occur. The exception appears overbroad. No public body should be permitted to refuse to disclose public record information merely because it relates to litigation. Attorney work-product and work-product directed by attorneys pertaining to litigation should be excepted, but that is no reason to keep public body policy determinations and factual material secret merely because it is related to the litigation.

Fourth. The "information of a personal nature" exemption -- Section 11 1) c).

Section 11 1) c) covers information of a personal nature, such as that kept in a personnel or medical file. It is best to deal with public access to such information within specific contexts rather than generally. The legislature has treated such information this way in the past. See many of the statutes listed in subsection m).

This would mean that such specific legislation as ORS 240.120, concerning state employee records, should not be repealed bu continued as an express exemption. Nevertheless, it would be advisable to maintain this exemption concerning information of a personal nature for all such information not otherwise specifically treated elsewhere by statute.

Moreover, taking subsection c) as it stands, it should be amended to show that the party seeking disclosure carries the burden of proving that public disclosure would not constitute an "unreasonable invasion of personal privacy." "Unreasonable" should also be defined as meaning "offensive or objectionable to a man of ordinary sensibilities."

We also recommend that the qualifying language be changed to read: "unless the public interest by clear and convincing evidence requires disclosure in the particular instance."

Fifth. The confidential information exemption -- Section 11 1) d).

Section 11 1) d) covers information submitted in confidence. This subsection is a backward step from the existing law. Subsection d) is the rewritten version of ORS 44.040 e). The Oregon Court of Appeals has recently held that there is a presumption in favor of disclosure and when the state relies on an assertion that the information was submitted in confidence, ORS 44.040 e) places the burden of proof on the state to show that the public interest would suffer by disclosure. Subsection d) appears to cast the burden of proof the opposite way and places the burden on the party seeking disclosure. The language of ORS 44.040 e) would be preferable to the new proposal. It must be remembered that this exception as proposed, in and of itself creates a loophole of huge dimensions. This exception will likely be used by administrators who cannot shelfter the records under any other exception. This exemption must be narrowly written if the goals of the "Right to Know" law are not to be thwarted.

One additional point on this exemption needs to be considered. Who is to determine whether records have been given "in

confidence" -- the preson who originally supplied the information, the public body by its own predilections or the public body by an objective standard. The first choice would permit individual citizens, guided only by self-interest, to dictate matters of state and local policy. The second choice would constitute unfettered administrative discretion which would be unacceptable. Only an objective standard would be consistent with the legislative goal of maximum disclosure except in compelling and legitimate circumstances.

We, therefore, recommend that this exception be amended to add two essential criteria: 1) that it apply only where the information provided "reasonably should be considered confidential" and 2) where the public body has obligated itself "in good faith" not to disclose the information.

Sixth. The records of "test questions."

There would appear to be ample justification to preclude public access to examination data before an examination is given and if part or all of the examination is to be given again. Where the examination will not be repeated, the data related to that examination should be available to the public.

Proposed Amendatory Language

SECTION 11. 1) The following public records are exempt from disclosure under this 1973 Act unless the public interest requires disclosure in the particular instance:

a) Records of a public body prepared in anticipation of litigation or for trial to which the public body is a party if the complaint has been filed, or if the complaint has not been filed, if the public body shows that such litigation is reasonably likely to occur. This exemption does not apply to litigation which has been concluded, and nothing in this paragraph shall limit any right or opportunity granted by discovery or deposition statutes to a party to litigation or potential litigation;

b) Trade secrets. "Trade secrets," as used in this section, may include, but are not limited to, any formula, plan, pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information which is not patented, which is known only to certain individuals within a commercial concern who are using it to fabricate, produce, or compound an article of trade or a service or to locate minerals or other substances, having commercial value, and which gives its user an opportunity to obtain a business advantage over competitors who do not know or use it;

c) Investigatory information compiled for law enforcement purposes. Nothing in this paragraph shall limit any right constitutionally guaranteed, or granted by statute, to disclosure or discovery in criminal cases;

d) Test questions, scoring keys, and other examination data used to administer a licensing examination, examination for employment, or academic examination before the examination is given and if the examination is to be used again;

e) Information consisting of production records, sale or purchase records or catch records, or similar business records of a private concern or enterprise, required by law to be submitted to or inspected by a governmental body to allow it to determine fees or assessments payable or to establish production quotas, to the extent that such information is in a form which would permit identification of the individual concern or enterprise. Nothing in this paragraph shall limit the use which can be made of such information for regulatory purposes or its admissibility in any enforcement proceeding;

 



f) Information relating to the appraisal of real estate prior to its acquisition;

g) Any public records or information the disclosure of which is prohibited by federal law or regulations;

h) Reports made to or filed with the court under ORS 137.075 or 137.530.

2) The following public records are exempt from disclosure under this 1973 Act:

a) Communications within a public body or between public bodies of an advisory nature to the extent that they cover other than purely factual materials and are preliminary to any final public body determination of policy or action. Where public recrods contain exempt advisory material along with factual material, the public body must separate out the factual material and make it available upon request. This exemption shall not apply when a final determination of policy or action has been made nor if the public body does not have a present intention of proceeding to final action within a reasonable time. In all other cases the exemption shall not apply unless the public body shows that in the particular instance the public interest in encouraging frank communications between officials and employes of public bodies clearly outweighs the public interest in disclosure.

b) Information of a personal nature such as that kept in a personnel, medical or similar file, if the public disclosure thereof would constitute an unreasonable invasion of privacy, unless the public interest by clear and convincing evidence requires disclosure in the particular instance. Unreasonable invasion of privacy means disclosure of matters that would be offensive or objectionable to a man of ordinary sensibilities. The party seeking disclosure shall have the burden of proving that public disclosure would not constitute an unreasonable invasion of privacy.

c) Information submitted to a public body in confidence and not otherwise required by law to be submitted where such information reasonably should be considered confidential and where the public body has obligated itself in good faith not to disclose theinformation and when the public interest would suffer by the disclosure.

d) Information of the Corrections Division, including the State Board of Parole and Probation, to the extent that disclosure would substantially prejudice the carrying out of the functions of the Division or Board, if the public interest in confidentiality clearly outweighs the public interest in disclosure.

e) Public records or information the disclosure of which is prohibited or restricted, or which is otherwise made confidential or privileged under ORS 1.440, 7.211, 7.215, 44.040, 146.780, 173.230, 179.495, 181.540, 240.120, 306.129, 314.835, 314.840, 336.195, 341.290 (19), 342.850 4), 351.065, 411.320, 418.770, 419.567, 432.060, 432.425, 432.430, 474.160, 483.610 or 657.665. Please note that several additional ORS sections have been added: ORS 240.120 records of the State Personnel Division), ORS 341.290(19) community college student and faculty records), ORS 342.850 4) common and union high school district personnel files), and ORS 483.610 accident reports made totthe Motor Vehicles Division).

Proposed Technical Amendments

1. Add a new definition section to Section 2 defining "inspection" to include "examination." Section 3 refers to a "righ to inspect" and then Section 4 refers to "inspection and examination" and then Secions 5 and 6 refer only to a "right to inspect."

2. The "privilege of non-disclosure" language in Section 8 appears inappropriate. The section should refer to Section 11 exemptions.

3. In Section 11 a) the references to "governmental body" and "agency" should properly be to "public body."

4. In Section 11 f) the reference to "criminal law" should be "law enforcement."

#####

HB2157
SB15
20 Jun 1973
Exhibit 1


# ENGROSSED HOUSE BILL 2157

## Proposed Amendments

(Proposed as a substitute for amendments proposed by the Commissioner of Labor, adopted by the Senate members of the Joint Committee on Professional Responsibility on June 18, 1973.)

On page 7 of the printed engrossed bill, after line 17 insert:

"(h) Investigatory information relating to any complaint filed under ORS 659.040 or 659.045, until such time as the complaint is resolved under ORS 659.050, or a final administrative determination is made under ORS 659.060."

3-5-73 jk

3B15 79



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OREGON STATE EMPLOYES Association
Founded in 1943
1127 TWENTY-FIFTH STREET S.E. • SALEM, OREGON 97301 • TELEPHONE 581-1505

February 28, 1973

Sen. Jack Ripper, Rep. Robert Ingalls,
Co-chairman
Joint Committee on Professional Responsibility
State Capitol Rm. 314
Salem, Oregon 97310

Dear Sirs:

Because the committee ran out of time before some of us were able to testify on House Bill 2157 at the hearing Monday night, I should like to put in writing for your consideration an important concern which we have regarding the public records provisions of the bill.

HB 2157 has the laudable purpose of increasing public disclosure of records. However, and probably by inadvertance on the part of the drafters, it has the opposite effect by repealing ORS 240.110 and 240.120 and substituting for them the rather general language in Section 11(C), lines 26 to 28 on page 6 of the printed bill.

ORS 240.110 requires state agencies and employes to furnish the Public Employe Relations Board with records and information, except confidential records designated by statute, administrative order or rule. ORS 240.120 states that records of the Personnel Division and the board, except those the rules may require be held confidential for reasons of public policy, shall be public records and open to public inspection. (A copy of this section is enclosed with this letter.) Instead the bill contains a provision regarding personnel records in Section 11(C), which will be discussed.

It is often necessary for an employe or his or her representative in protecting his or her interests to have access to personnel actions affecting the employe or persons in similar situations. For many years there was little problem in securing this information. In the past year or two, however, there has been a tendency in the Personnel Division to deny access to these records on any possible pretext. This problem has been increasingly acute during the period of controversy regarding denial of merit pay increases under the legislature's 87-75 percent limitation, involving cases where employes and their representatives have felt the denials to be arbitrary.

The Personnel Division's reasons for denial of access may not necessarily be to hide information or to make it difficult for employes to be represented properly, and could be only because it does not want to be bothered with the requests. However, I am sure the committee, in considering more open disclosure of other records, does not consider "bother" to be a governing consideration.

We are sure that if ORS 240.110 and 240.120 were repealed , there would be an immediate tightening up of access to any kind of personnel records in the many personnel offices in the state agencies. The agency personnel officers could be depended upon to rely on the opening words of the sentence in Section 11(C), exempting from disclosure "information of personal nature kept in a personnel, medical or similar file. . ." and forgetting the rest of the sentence ". . . if the public disclosure thereof would constitute an unreasonable invasion of personal privacy."

Using the argument of "personal privacy," the Personnel Division only recently tried to deny access to a routine personnel action form, because somewhere among many other items the record happened to contain the employe's age.

At the present time there is being contested before the Public Employe Relations Board the matter of "confidentiality" of a communication between a supervisor and a department head, in effect black-listing the employe from any future promotion because of his activity in an employe organization.

Co-chairman Ingalls is aware of and has co-sponsored a bill (HB 2496) to correct a practice, not in the Personnel Division but affecting faculty members in Higher Education, of denying these academic employes access to even their own personnel records, and even when the records are needed by the employe to present his case in an appeal proceeding provided by the employer.

We strongly urge that HB 2157 be amended by deleting from the title of the bill, on line 6 of page 2, and in the repealer section, on line 27 of page 22 of the printed bill, the numbers "240.110, 240.120."

The deletion of these repeals would not change the present situation, but would at least keep it at the status quo and not permit or encourage further restrictions upon legitimate disclosure. We feel sure Attorney General Johnson, who authored the bill, would not want his bill to have the effect we envision and would not object to the amendment.

I would like to have the opportunity to discuss this question with the committee at its next hearing, and I would also be pleased to discuss the subject of privacy of labor negotiation sessions when it comes up, either on the public meetings section of HB 2157 or in Senate Bill 15.

Very truly yours,

Tom Enright

Thomas C. Enright
Executive Secretary

Encl.
cc: Committee members
Atty. General Johnson

CITY OF SALEM, OREGON
City Hall/555 Liberty St. S.E.
Zip Code 97301

February 6, 1973

Senator Eugene Potts, Chairman
Senate - State And Federal Affairs Committee
Room #12, State Capitol Building
Salem, Oregon 97310

Dear Senator Potts:

Subject: Senate Bill 15 - Public Meetings

In reviewing Senate Bill 15 with its proposals for open public meetings of all public agencies of the State, I would like to make some suggestions for possible amendments based upon the City of Salem's experience with meetings of the City Council. The changes which I would respectfully ask that you review and consider are as follows:

In Section 3, Paragraph 2, add the following:

> "Provided, however, any person desiring to appear before a legislative body may be required as a condition thereto, to identify himself by giving his name and address."

This appears to be a normal condition for anyone making formal presentations before City Councils and would perhaps eliminate any confusion over this requirement which is really for the convenience of obtaining an accurate record of facts presented and a guide to later contacts with persons making formal appearances.

Under Section 8, we would also suggest the addition of two sections, (c) and (d), which would add to further reasons for holding executive sessions. These suggestions are:

> (c). To consider matters pertaining to labor negotiations of the public body with its employes.

If negotiating or bargaining sessions are to have any meaning then the development of positions and strategies to be employed by persons representing the employer cannot be arrived at in public session.

> (d). Discuss with and receive advice from legal and management employees of the public agency on any matters relating to pending or impending litigation before any court or commission, agency or board of arbitration other than itself.

This section would enable a legislative body to discuss positions, strategies and approaches to such items as purchase of land, condemnation proceedings, etc., which are matters that cannot again be discussed in public if the public agency is to perform in the interest of the public it serves.

 



I would hope that the Committee would give consideration to these possible amendments. I am sure that the Salem City Attorney or myself would be glad to appear before your Committee to answer questions on these points or to explain any of them further for your information.

Yours very truly,

Robert S. Moore

Robert S. Moore
City Manager

RSM/sh

LEE JOHNSON
ATTORNEY GENERAL

DEPARTMENT OF JUSTICE
STATE OFFICE BUILDING
SALEM, OREGON 97310
TELEPHONE (503) 378-4400

March 5, 1973

Mr. Myer Avedovech
City Attorney
City Hall, 926 Main Street
Milwaukie, Oregon

Dear Myer:

Representative Roger Martin has asked that I answer your letter of February 20. Taking each of your question in their order:

1) Will the city attorney continue to enjoy an attorney-client privilege between himself and the city council, an elected body, and/or city manager and department heads who are not elected but appointed or civil service appointments?

A) The attorney-client privilege is somewhat anomalous when applied to government agencies. In the first place, I know of no privilege for communications from the attorney to his client. A common law attorney-client privilege only refers to those communications from the client to the attorney. The purpose of the privilege is to protect private persons so that they can feel free to spill their guts to their lawyer and the conversation will remain inviolate. I am not certain that the same principle applies when you are talking about governmental agencies. Certainly the advice of the attorney to a governmental agency should be public record. Indeed under ORS Chapter 180 I am required to publish all of my opinions. I would think that the protection provided by Section 11(2)(b) should be sufficient.

2) What of memoranda which are daily products of the attorney's office which go to various department heads -- are these to become public records and reviewable at the request of any citizen?

A) The same principles apply. It is our opinion that the protections provided by paragraph 11, 1(a)(b)(c)(d)(f)(i) and (m) are sufficient to protect any needed confidentiality.

 



3) What about daily correspondence, such as this letter I am currently addressing to you, or other letters which I would write in the normal course of my duties?

A) See question number 2.

4) Realizing there is a provision regarding litigation, would it be possible under this to have a discussion in private with the city council regarding the pros and cons of proceeding with litigation, defending litigation, indicating the legal position of the city, its weak points, without fear of having newspaper reporters or the general public demanding to sit in on these types of sessions?

A) Under the present provision of Section 12 of the bill, this type of discussion with the City Council would have to be held in public. I recognize that there may be some risks involved. However, this office continually carries this kind of conversation on with agencies in a public atmosphere and has not felt that any disadvantage resulted. Under modern discovery rules, the opposing party is usually in a position to pretty well diagnose your weaknesses and strengths.

5) What about informal opinions, oral or written, given to department heads and or the city council, must these be done publicly and made available to the public for their inspection?

A) Such opinions would be subject to public disclosure except as covered by Section 11 2(a).

6) Does the intent of this bill go to dictate the location of all meetings of the council? What is meant by this is our council has precouncil meetings to discuss items on the agenda, get last-minute handout material from staff regarding items, ask any questions anybody has about the agenda or what is going to happen during the evening. No decisions are made, and no great-length discussion held. The meetings are open to the public and the press if they so wish, but are usually held in the city manager's office, which would probably not accommodate more than four or five additional people in addition to the council. We always maintain the option that if a lot of people show up for a precouncil meeting, of going upstairs to our city council chambers. Must we hold all meetings in our city council chambers?

A) I do not believe that Section 12 is designed to dictate the place the City Council meetins are to be held. The spirit of the law is to encourage public meetings. One of the abuses that it is directly aimed at is the so-called pre-council meeting regardless of its purpose.

7) Under Section 12, subsection (5) states: "When private communications among or staff communications with the members of a governing body substantially form the basis for a decision, the substance of such communications shall be disclosed at public meetings." Does this mean that only the general nature of the memorandum submitted by staff to the council or governing body is available in an oral statement from the council, or must that memorandum be produced for inspection if requested?

A) We agree with you that the quoted languange will be difficult to enforce. As I stated in my testimony before the committee, Section 12 as a whole will be difficult to enforce. Rather it is a statement of public policy and will be up to governmental bodies to decide whether they are going to comply with the spirit of that policy. As to memorandums, while it may not be necessary that they be disclosed under Section 12(5), it would seem that they are clearly public records under Section 1-11.

If I can answer any further questions, please advise.

Yours very truly,

LEE JOHNSON
Attorney General

LJ:bjm
cc: Representative Roger Martin
Professional Responsibility Committee Members

Joint Committee on Professional Responsibility
Legislative Assembly
of the State of Oregon

PREPARED STATEMENT OF DANIEL H. SKERRITT

Re: SENATE BILL 15

## INTRODUCTION

I co-chair the State Legislation and Procedure Sub-Committee of the American Bar Association Committee on Access to Government Information.

The following statement is presented on my own behalf as a practicing attorney, and as an interested citizen.

It was not possible for me to comply with the ABA clearance procedure within available time limits, so I wish to advise the Committee that my views do not necessarily reflect the position of the ABA or the Subcommittee which I serve.

## CRITIQUE OF SB 15

SB 15 requires that legislative bodies of public agencies open their meetings to the public. The Bill further requires these legislative bodies to set a time for regular meetings, and to give notice of special meetings.

Section 3 is the heart of SB 15. It declares that unless otherwise exempt by this Act, all meetings of a legislative body of public agency shall be open, and all persons shall be permitted to attend any such meeting.

Section 8 sets forth the exemptions to the Bill's open meeting requirement. This Section permits the legislative body to hold executive session (1) to consider appointments, employment, or dismissal of a public officer or employee(8(1)(a)); or (2)

to hear complaints or charges brought against a public officer or employee, unless the respondent to the charges requests a public hearing (8(1)(b)). Subsection 8(2) also permits the exclusion of witnesses during an investigative hearing.

Section 10 of the Bill has a private enforcement provision, permitting any interested person to seek mandamus, injunction, or declaratory relief to compel an agency's compliance with the open meeting requirements.

## PASSAGE URGED

Oregon has no open meeting law at present. This places Oregon in a distinct minority. A 1970 survey conducted by the Freedom of Information Center of Columbus, Missouri, indicates that 40 states have statutes guaranteeing public access to the meetings of legislative bodies of public agencies. (State Access Statutes: A comparison, Freedom of Information Center, Bulletin No. 36, June 1970).

Minor controversies may arise concerning the scope of exemptions from the general open meeting requirements. Generally, however, the experience of states with open meeting laws shows that public attendance seldom impairs the efficiency of government operations. The public gain far outweighs an agency's slight inconvenience in accommodating the interested public.

SB 15 will fill a void in Oregon's laws relating to administrative agencies. I urge passage of this Bill.

## SUGGESTED AMENDMENTS

Although I strongly support SB 15, I ask the Committee to consider four recommended changes. The first suggested amendment presents a policy issue. The remaining three, however, are designed to eliminate potential problem areas in administering an open meeting law.

1. Definition of Public Agency. 3-12-73

The definition of the "meetings" and the "agencies" to which the Bill applies are generally satisfactory. However, subparagraph (4)(b) of Section 2 should be changed. As written, this subparagraph includes within the definition of "Public Agency",

> "(b) All private nonprofit organizations that receive public money to be expended for public purposes pursuant to the 'Economic Opportunity Act of 1964'. (42 U.S.C. 2701 et seq.)"

No sound philosophical basis exists for restricting the open meeting requirement to private organizations receiving public money from this one source. From a practical standpoint, it now appears that many of the programs created by the Economic Opportunity Act will continue - if at all - from alternative funding sources, such as Revenue Sharing. The public should have the right to attend any meeting of a private organization that is dealing with the expenditure of public funds for a public purpose. Accordingly, the following amendment to Section 2(4)(b) is recommended.

> "(b) All private nonprofit organizations that receive public money to be expended for public purposes, except when such organization is considering any matter clearly unrelated to either the expenditure of such money, or the administration of the program or activity that is publicly funded."

2. Protecting Employees' Hearing Rights.

Section 8(1)(a) permits an agency's legislative body to convene in an executive session "to consider the appointment, employment or dismissal of a public employee..." This exemption may be necessary at times to protect the privacy of public employees and to permit open and frank discussions of such matters that may be impossible at an open meeting. However,

Section 9 provides that if enacted, the Act would supersede all conflicting provisions of state law.

When Section 8(1)(a) and Section 9 are read together, the danger exists that an employees' hearing rights upon dismissal may be eliminated. Therefore, I recommend that Section 9 be amended as follows:

> "Section 9. The provisions of this Act shall supersede all conflicting provisions of state law, except that no person's right to a public hearing or any other right guaranteed by the Administrative Procedures Act (ORS Chapter 183) shall be impaired, and this Act shall not apply...etc."

3. Who May Request a Public Hearing?

Section 8(1)(b) needs clarification. Presumably, the intent is that the officer or employee against whom a complaint is made may request a public hearing. As written, however, either the complainant or the respondent may make the request. I, therefore, recommend that the words "against whom the complaint or charge is made" be inserted between "employes" and "request" at line 28.

4. Labor or Contract Negotiations.

The legislative body of a public agency may be required to enter into sensitive negotiations that may require closed meetings. Section 8 does not contain any exemption for such "shirt-sleeve" negotiating sessions. The scope of such an exemption may take a variety of forms, and should be carefully studied. The following is suggested as a new subparagraph (c) to Section 8:

> "(c) To conduct or prepare for negotiations preliminary to the execution of a contract with public employes or for other negotiations relating to a labor dispute."

It is with considerable hesitancy that I suggest any additions to the exemptions provided in Section 8. This law is needed in Oregon, and it will be valuable only if the exemptions are kept to a minimum and remain narrowly drawn. However, the labor negotiations issue has surfaced as a problem area in our neighboring state of Washington (See The Oregonian, Feb. 20, 1973, p. 12). The issue should be considered by this Committee.

LEE JOHNSON
ATTORNEY GENERAL

DEPARTMENT OF JUSTICE
STATE OFFICE BUILDING
SALEM, OREGON 97310

TELEPHONE: (503) 378-4400

April 2, 1973

Hon. Jack Ripper
Hon. Bob Ingalls
Co-Chairmen, Committee on
Professional Responsibility
314 State Capitol Building
Salem, Oregon

Gentlemen:

In a letter dated March 29, 1973, Thomas C. Enright, Executive Secretary of the Oregon State Employes Association, suggested that my recommendation that there be no exemption for collective bargaining from the open meeting law was made without thorough consideration or research.

I would point out that we began study in this office of the open meetings law several months ago and that we have researched every conceivable relevant source. Further, I would point out that our initial position (see House Bill 2157) was that labor negotiations should be exempt. It was only after considerable deliberation that we changed our position. My office is charged with much of the responsibility of assisting the state Executive Department and the other agencies of state government in labor management negotiations. Two members of my staff have had a combined experience of over 15 years in labor management law and negotiations. One member was formerly with the National Labor Relations Board, was a labor management consultant in private industry, labor arbitrator and chief labor negotiator for the state.

OSEA's advocacy of secret negotiations is a traditional position derived from experience in private industry and as a consequence has some support in the present law. However, I think it is a position which is clearly self-serving and of questionable application in the field of public employee bargaining.

OSEA's Executive Secretary fails to face up to the fact that Senate Bill 15 in dealing with the question of labor negotiations and other subjects of public business is changing the law for a better public policy, namely that the public's right to know how government is operating and spending its money far outweighs any personal advantage to those who have to make decisions. In many governing bodies, schools for example, the personnel expenses constitute as much as 80 percent or more of the budget of the governing body. The essential issue in those negotiations is the question of determining priorities between salaries and benefits for employees versus other public services. Certainly the positions taken on these matters by management and the employee representative are a legitimate and vital matter of public concern.

As a practical matter, labor negotiations today are conducted in secret with each party then issuing press releases thereafter explaining and defining what has occurred. It would seem that the press and the public would have a much better chance to know what transpired by witnessing the negotiations rather than to have to derive their information from the biased releases of either side.

Mr. Enright also suggests that open meetings will lead to an increase in litigation. This is absurd. A good deal of litigation in labor management relations occurs today because the meetings are held in secret. Parties find it to their advantage to file charges of "unfair labor practices" and "bad faith bargaining" as a means of soliciting public support for their side. The charges are usually dropped or dismissed by the Board after the negotiations have been completed. If the bargaining is held out in the open, this kind of bargaining device will no longer be effective.

I also believe there is no justification for comparing the bargaining atmosphere in the private sector with that of the atmosphere in the public sector. Nearly all of the reasons for the closed bargaining sessions in the private sector are inapplicable in the public sector. For example, one of the reasons advanced for secret meetings in the private sector is for the protection of financial records from competitors. Obviously in the public sector such financial information is and should be public information. Likewise it is often argued that by permitting private

sessions, this gives the parties a better atmosphere to work out the face-saving agreements. It would seem this is not an appropriate concern in the public sector and certainly not a cost that should be imposed upon the taxpayers. I firmly believe that if the public has access to these bargaining sessions, particularly through press, the coverage will greatly diminish and eventually eliminate irresponsible demands by both management and labor.

By law my office necessarily must represent state government management in these matters. We believe that it is in the best interest for our clients and the public that these negotiations be open. We have a hard time understanding why the Executive Secretary of OSEA is not willing to assume the same responsibility.

Yours very truly,

LEE JOHNSON
Attorney General

LJ:bjm

cc: Governor Tom McCall
Committee Members
Oregon AFL-CIO
Oregon Education Association
Oregon School Boards Association
Association of Oregon Counties
League of Oregon Cities

Loretta Hill 161
4-2-73 HB 2157
SB 15

OFFICE OF CITY ATTORNEY
CITY HALL
PORTLAND, OREGON 97204

Clifford N. Carlsen, Jr.
CITY ATTORNEY



March 29, 1973

Sen. Jack D. Ripper, Co-chairman
Rep. Robert C. Ingalls, Co-chairman
Joint Committee on Professional Responsibility
314 State Capitol Building
Salem, Oregon 97310

Re: SB 15

Dear Sen. Ripper and Rep. Ingalls:

I have been asked to convey to you and your committee certain exceptions which I believe should be included in SB 15, the Open Meeting Bill. These exceptions, and the reasons for them, are as follows:

1. Deliberations concerning the employment, discharge or discipline of a public officer or employe, unless the officer or employe requests a public hearing. The value of a public disclosure of adverse statements likely to be made in the course of such deliberations does not justify the possible detriment to the employe. Although the decision of the public agency may favor the employe, the suspicion created by the adverse statements, if open to public disclosure, is a compelling reason for this exception.

2. Deliberations relating to collective bargaining matters. It is not equitable to require public agencies to disclose their posture toward labor demands when the labor unions are not required to do likewise. Without this exception, the balance between the parties in bargaining matters would be destroyed.

3. Deliberations on an appointment to fill a vacant elective office. Appointments of this nature admittedly are of substantial public importance. However, because of this importance, deliberations by the appointing officials should be candid. Many officials would probably be reticent to express their opinion about the relative merits of the persons being considered, if the meetings were open to the public. This exception is therefore justified by the need to select the most qualified person without in any way demeaning other persons under consideration.

4. Advice of legal counsel to the legislative body. The frankness with which attorneys and clients must deal with each other, of necessity, has historically justified the confidentiality of the attorney-client relationship. [See ORS 44.040.] This confidential relationship should not be impaired simply because the client is a public agency.

5. Deliberations on measures to prevent or suppress an anticipated civil disorder. The public interest in preventing or suppressing the violence attendant with a civil disorder far outweights the public need for disclosure of the measures that may be taken. In fact a public disclosure of those measures very well could materially aggravate the situation. This exception therefore is of substantial importance.

If you wish, I will be pleased to appear before your committee to elaborate upon any of the exceptions I have outlined or the reasons for them.

Very truly yours,

CLIFFORD N. CARLSEN, Jr.
City Attorney

RAB:jw

Appendix A

Lee Johnson

4-16-73

House Bill 2157: An outline of policy decisions which the committee may wish to consider.

I. Amendment No. 1 deleting Section 12 relating to public meetings. This matter is now covered by Senate Bill 15.

II. Amendments No. 2 through 10, and 13. These are amendments resulting from consultation between the Attorney General's office and state agencies. The amendments are supported both by the agency and the Attorney General.

III. Amendment No. 11 proposed by the State Accident Insurance Fund. The Attorney General takes no position on this amendment, but believes it is a policy decision to be made by the committee.

IV. A) Section 6 of the bill provides for administrative review by the Attorney General's office. The committee should decide:

a) Whether there should be administrative review. The Attorney General's office takes the position that such review is desirable to provide an inexpensive and expeditious remedy to the citizen who has been denied access to public records. The cost of providing such a review is deminimus because all that is required would be a cursory review of the records in question.

b) The committee may wish to place the administrative review function in an office other than the Attorney General for state matters, and an office other than the District Attorney for local matters.

C) The committee may wish to delete Section 8 which is an exemption from administrative review for documents of an elected official.

If the committee decides to remove the concept of administrative review, then the judicial review sections should be amended as suggested in Amendment No. 12.

V. Section 11 lists those records which are not subject to public disclosure. The committee may wish to review each of these exemptions.

VI. Section 13 deletes the concept of executive privilege.

VII. Sections 14 through 35 are technical amendments to conform existing statutes.

PROPOSED AMENDMENTS TO HB 2157

1. Deletes section 12, open meeting provisions, covered by SB 15.
2. Revenue Department. Adds other statutes relating to confidentiality of tax records to list of exemptions; preserves confidentiality when records are transferred.
3. Banking Division. Provides for confidentiality of records, reports, etc., received by the Superintendant of Banking.
4. Clarifies criminal investigation exemption provision; Section 11(1)(f).
5. Agriculture Department; clarifies exemption for crop records, etc.; Section 11(1)(h).
6. Corrections Division. Restores ORS 44.040(1)(e), testimonial privilege of public officers, amended to refer to records exempt under "this Act."
7. Health Division. Restores present partial exemption for birth and death records.
8. Motor Vehicles Division. Restores present provisions relating to confidentiality and nonadmissibility of accident reports.
9. PERB. Creates exemption for certification or decertification petitions.
10. Insurance Division. Restores confidentiality of investigation reports, and agents' commissions.
11. SAIF. Provides for confidentiality of employer account records, dividend schedules and formulas.

H. Charles Lee

12. Deletes provision for administrative review.

13. Fire Marshall. Restores confidentiality of fire investigation records.

No. 1

Proposed Amendment
To House Bill 2157

On page 8 of the printed bill, delete lines 29 to 33 and insert:

"Note: Section 12 was deleted by amendment."

Delete all of page 9.

On page 10, delete lines 1 to 10.

 

HOUSE BILL 2157

PROPOSED AMENDMENTS

No. 2

On page 8 of the printed bill, in line 5, after "44.040," insert "57.850,", and after "306.129," insert "308.290,".

On page 8, in line 6, after "411.320," insert "416.230, 418.135,".

On page 8, in line 7, delete the period and insert a semicolon.

On page 8, after line 7, insert:

"(n) Public records or information described in this section, furnished by the public body originally compiling, preparing or receiving them to any other public officer or public body in connection with performance of the duties of the recipient, if the considerations originally giving rise to the confidential or exempt nature of the public records or information remain applicable."

Proposed Amendment
To House Bill 2157

On page 8 of the printed bill, in line 7, delete "or" and insert a comma, and delete the period and insert ", 706.720, 706.730, 715.040 or 721.050."

On page 8, following line 7, insert:

"(o) Records, reports and other information received or compiled by the Superintendent of Banking in his administration of ORS chapters 709, 711, 716, 723, 724, 725 and 726, not otherwise required by law to be made public, to the extent that the interests of lending institutions, their officers, employes and customers in preserving the confidentiality of such information outweighs the public interest in disclosure."

Note: A new subparagraph (n), also following line 7, is added by proposed amendment No. 2, and subparagraph (o) would follow if both are adopted.

 

No. 4

Proposed Amendment
To House Bill 2157

On page 7 of the printed bill, in line 7, delete the period and insert: ", except that the record of an arrest or the report of a crime shall not be confidential unless and only so long as there is a clear need in a particular case to delay disclosure in the course of an investigation."

HOME ADDRESS
JACK RIPPER
P.O. BOX 489
NORTH BEND, OREGON 97459

COOS, CURRY COUNTIES
DISTRICT 24

HB2157 file
SB15
16 April 1973
OREGON STATE ARCHIVES



COMMITTEES
VICE CHAIRMAN:
STATE AND FEDERAL AFFAIRS
MEMBER:
APPROPRIATIONS AND
WAYS AND MEANS
ENVIRONMENT AND LAND USE

# OREGON STATE SENATE

SALEM, OREGON
97310

April 9, 1973

Dear

House Bill 2157 has been referred to the Joint Special Committee on Professional Responsibility. The original bill dealt with two main areas, open records and open meetings. Earlier in the session, the committee voted to separate the two areas and make them two separate bills. Open meetings was written into SB 15 and open records will be included in HB 2157.

Since open records legislation is of interest to your agency, we would like to be sure that you have a chance to tell the committee your opinions of the bill and what you would like to see included.

The committee will be having its first hearing on open records on April 16, 1973, at 7:00 p.m. in Room 309 of the capitol. In order to assist the committee in producing the best possible bill, we are asking that each of you review the bill and give any amendments or additions you may have to the Attorney General's Office (ext. 6368). This office will put the amendments in their proper form and Mr. Lee Johnson will present them to the committee for consideration as a total package.

We feel that this procedure will expedite the amending process of the bill and aid the committee in producing a good piece of legislation.

Yours truly,

JOINT SPECIAL COMMITTEE ON PROFESSIONAL RESPONSIBILITY

Senator Jack Ripper, Co-Chairman
Representative Robert Ingalls, Co-Chairman

lh

HOME ADDRESS
WALLACE P. CARSON, JR.
1309 HILLENDALE DRIVE SE
SALEM, OREGON 97302

MARION COUNTY
DISTRICT 16

4/16
HB 2159
SB 15



REPUBLICAN WHIP

COMMITTEES
MEMBER:
EDUCATION
LOCAL GOVERNMENT AND URBAN AFFAIRS
ELECTIONS
LABOR

190

OREGON STATE SENATE
SALEM, OREGON
97310

April 10, 1973

Representative Robert Ingalls
Oregon House of Representatives
Capitol Building
Salem, Oregon 97310

Dear Bob:

In accordance with your request, I enclose a proposed addition to SB 15 (or, perhaps, it could be a separate bill) to reaffirm the legislative desire to monitor this area.

Yours very truly,

Wallace P. Carson, Jr.

Encl.
cc: Senator Fred Heard

WPCj:gc

ORS 173.720

(adding new material)

(7) Conduct a continuing study of the open meeting law, with particular emphasis on the exclusions and exemptions provided in the law, and if considered advisable, make recommendations for additional legislation.

HB2157 17
SB 15



MAIN OFFICES
408 STATE OFFICE BUILDING
1400 S.W. 5TH AVENUE
PORTLAND, OREGON 97201
115 LABOR AND INDUSTRIES BUILDING
SALEM, OREGON 97310

BRANCH OFFICES
301 STATE OFFICE BUILDING
EUGENE, OREGON 97401
130 W. 6TH, SUITE 204
MEDFORD, OREGON 97501
ROOM 102, STATE OFFICE BUILDING
PENDLETON, OREGON 97801
705 SOUTH 4TH
COOS BAY, OREGON 97420

STATE OF OREGON
BUREAU OF LABOR

N. O. NILSEN
COMMISSIONER

June 11, 1973

Senator Jack D. Ripper, Chairman
Joint Committee on Professional Responsibility
State Capitol - Room 314
Salem, Oregon 97310

Dear Senator Ripper:

After reviewing HB 2157 which is to have a hearing before your Committee Monday, June 11, we find some problems with the bill which would make it difficult, if not impossible, for the Labor Commissioner to carry out his duties under the law.

The attached amendments which we propose would broaden the confidentiality of records in litigation to include administrative agency proceedings and to cover instances where an agency may be "involved" but is not directly a party to the litigation. Our third amendment speaks to the fact that there are many kinds of law enforcement responsibilities besides criminal law. We believe that any agency which has law enforcement duties should be able to keep its investigatory information confidential. Otherwise we see ourselves facing the prospect of respondents on our doorstep seeking our records on the case (and we would have no reciprocal right to their files). Therefore, we believe that all law enforcement agencies' records should be exempt at the investigative stage.

The Bureau of Labor has many statutory responsibilities for investigative and enforcement procedures. We are especially concerned about our duties in enforcing ORS 659.010 to 659.115 (Civil Rights Laws) and ORS 658.005 to 658.245 (Private Employment Agencies). The Bureau is involved in numerous quasi-judicial proceedings under the Administrative Procedures Act. In Civil Rights cases, for example, the Bureau is involved, but is not a direct party to the litigation. We believe it is in the public interest that these types of records be confidential. It is particularly important in instances of investigatory and litigation records to protect the rights of the parties involved as well.

We respectfully urge the Committee's consideration of our proposed amendments.

Sincerely,

Norman O. Nilsen
Commissioner of Labor

NON:lb